HODEL AND HESSE NOMINATIONS

HEARING

BEFORE THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF DONALD PAUL HODEL TO BE SECRETARY OF ENERGY; AND MARTHA O. HESSE TO BE ASSISTANT SECRETARY OF ENERGY FOR MANAGEMENT AND ADMINISTRATION

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HODEL AND HESSE NOMINATIONS

WEDNESDAY, DECEMBER 1, 1982

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 3110 Dirksen Office Building, Hon. James A. McClure, chairman, presiding.

Present: Senators McClure, Hatfield, Weicker, Domenici, Warner, Murkowski, Nickles, Heinz, Jackson, Johnston, Bumpers, Ford, Metzenbaum, Matsunaga, Tsongas and Bradley.

Also present: Charles A. Trabandt, chief counsel; E. David Doane, counsel; Gary Ellsworth, counsel; and D. Michael Harvey, chief counsel for the minority.

OPENING STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

The CHAIRMAN. Good morning. The committee will come to order. This hearing is to consider the Presidential nominations of Donald P. Hodel, of Oregon, to be the Secretary of Energy, and Martha O. Hesse, of Illinois, to be the Assistant Secretary of Energy for Management and Administration.

Today is just as uncertain a time in our country's energy history as was 1977 when the Department of Energy was established. The new Department consolidated at Cabinet level the many Federal energy activities that had previously been dispersed throughout the Government. However, we are still faced today with a major reliance on unpredictable international sources for our energy.

During the past 2 years, the 97th Congress, through the budget and appropriations process, has achieved two major changes in the programs of the Department of Energy. First, excessive Government management of fuels has been removed, thus reducing substantially the regulatory burden that had previously been imposed on industry.

Second, primary reliance has been placed on the private sector for certain energy research and development activities. What remains within the present Department are many programs that are essential to our country's energy future. It is equally essential that these programs be continued at levels of program activity that can respond adequately to the continuing threat from vagaries in international energy supplies that could jeopardize our economic recovery.

It is also essential that these programs remain centralized in a single Federal agency. Examples of these programs include energy emergency preparedness; the U.S. participation in the international energy program the strategic petroleum reserve, Federal power marketing activities, such as those of the Bonneville Power Administration from which Mr. Hodel has come, and nuclear energy development, including nuclear waste disposal, to name just a few of the activities.

Another essential function of the Department of Energy and, in turn, the Secretary of Energy, is to plan, coordinate, and manage a balanced energy research and development program, including coordination of national laboratory activities. This includes the assessment of research and development needs, and the establishment of priorities to meet those needs.

In addition to its civilian programs, the Department is responsible for nuclear weapons development.

For obvious reasons, the formulation and implementation of national energy policy must reside in a Cabinet officer who can serve as the administration's spokesman before the Congress, to the American people, and in the international community. That need has not diminished; and that responsibility will continue to rest with the Secretary of Energy until such time as the Congress acts on the President's proposal to merge the Department of Energy with the Department of Commerce.

Until the Congress acts on that proposal, the Secretary, and other officials and employees of the Department, have the statutory responsibility to carry out the policy and program responsibilities now vested in the Department by the Congress. Proposed changes in the policies and programs of the Department are just that—proposed changes—until they are endorsed in whole, or in part, by the Congress.

I would like to turn now to Mr. Hodel's qualifications to be Secretary of Energy. For the past 2 years, he has served as Under Secretary of the Interior. His job was to manage the day-to-day operations of the Department, and he carried out his duties in an effective and highly competent manner.

Prior to his appointment as Under Secretary of the Interior, Mr. Hodel was engaged for 3 years in the energy consulting business. From 1969 to 1978 he was the Deputy Administrator and then the Administrator of the Bonneville Power Administration. While serving as BPA Administrator, he developed a solid reputation as a capable and knowledgeable manager. He thus brings to the Department of Energy a broad knowledge of energy issues, a professional background, and most importantly, extensive management experience as BPA Administrator and Under Secretary of the Department of the Interior. Mr. Hodel is clearly well suited for the job of Secretary of Energy.

I would ask Senator Jackson if he has a statement he would like to make at this point.

Senator **Jackson**. Senator Hatfield has indicated that he has a conflict and must leave and he had requested the opportunity to introduce to this group a friend as well as a fellow citizen of Oregon, and I will yield to Senator Hatfield.

STATEMENT OF HON. MARK O. HATFIELD, A U.S. SENATOR FROM THE STATE OF OREGON

Senator **Hatfield**. Mr. Chairman, I want to express my appreciation to the Senator from Washington to yield at this moment and I want to say that it is a great pleasure that Senator Packwood and I, as the two Senators from Oregon, present to the committee this morning, Mr. Don Hodel. Really we are getting sort of two for the price of one because Barbara, his wife, has been a very constant companion and associate with his professional life as few wives have been able to do over the years. So I am delighted to welcome both of them to the committee this morning.

Mr. Chairman, I want to just make some very brief remarks saying, in effect, my long acquaintanceship and working relationships with Don Hodel have been both professional, public, and political. I must say that during those long years our political relationships have more frequently probably differed than our professional relationships and our public relationships because at the time that Don was very active and ultimately became the chairman of the party of my State, my party, he represented another wing of my party than what I represent. Yet I found that in those political differences that we had, we were able to transcend those differences because you start on the base of good faith and intelligence, you can resolve even differences within my party although it often does not get demonstrated.

I want to say, also, that my enthusiastic support for Don Hodel stems from a record of public performance and his own professional career. Senator Jackson and I, since I have been on the committee, had always considered that the Bonneville Power Administration belonged to the States of Washington and Oregon and we learned that it now includes Idaho. [Laughter.]

Since we have a new chairman of this committee and I only make that comment because I can remember when Senator Jackson under Democratic administrations used to say, "Well, here is a good man to become the new Bonneville Power Administrator," and under Republican administrations, I would say, "I have a good man in mind, too."

I want to point out that Russ Richmond in my view was one of the best administrators we ever had of the Bonneville Power Administration. I went down to a Republican White House and pled the case on behalf of the reappointment of Russ Richmond who had been appointed by a Democratic administration.

Senator **Jackson**. And who was career.

Senator **Hatfield**. And who was a career man. John Mitchell and some of the others down there, I cashed in a few brownie points and we got him reappointed under a Republican administration. Russ Richmond came to the point where he wanted to retire and by this time, it was obvious that he had to find a successor and Senator Jackson and I and other members of this committee, of course, felt that Don Hodel would make an excellent deputy director and with that kind of bipartisan support, he was appointed as deputy to Russ Richmond and I think he got some excellent tutelage under that regime.

Then Don Hodel became the director of the Bonneville Power Administration.

One of the things that concerns me most about this whole energy problem is conservation and I want to say that Don Hodel early on wanted to utilize Bonneville funds to provide for conservation programs and to put Bonneville into the conservation business.

It was not until 1980 that Senator Jackson initiating and I had the pleasure of cosponsoring the Northwest Power Act along with Senator McClure and others, that we wrote into law that conservation should be considered as equivalent to a new source of energy.

I think that puts us into an excellent opportunity now to have that kind of support from the Department as well as within the new Northwest Power Act of 1980 because my view is that the Department has neglected the conservation program for too long and we have generally been reducing those budgets too much.

I want to say that since the announcement of Don Hodel's appointment and by the way, I had recommended to President Reagan that Don Hodel be the Secretary of the Interior. He was my candidate for the Secretary of the Interior and, of course, he ended up in the No. 2 spot with Secretary Watt and I think has done an excellent job in that role.

Two criticisms have been leveled against Don Hodel recently, one, for his lack of oversight on the WPPSS projects, nuclear facilities, while he was BPA Administrator. The Sierra Club will make a recitation here today concerning that point amongst others perhaps.

I must counter that argument. I think it is a specious argument or criticism because I think that even though we might say that the past role of Bonneville Power has not always been the most perfect role, let us bear in mind that it was not Bonneville Power making those projections of energy requirements. It was the utilities of the Northwest making those projections that led to the commitments of WPPSS. I don't think it was the negligence of any single individual but because of the institutional constraints on the Bonneville Power Administration itself at a time when they were limited and let me remind the committee, Bonneville Power Act limited very specifically and the institutional constraints as well, the role that Bonneville played in the active participation in non-Federal power acquisitions.

That was one more reason Senator Jackson and the rest of us who participated in the Northwest Power Act sought to more clearly define the Bonneville role, the BPA role, in future acquisition. We set that forth in very specific detail.

Second, the personal criticism of Don Hodel has been challenging his record providing access to information about BPA activities during his tenure as administrator and suggests that he might have withheld important information about the WPPSS financial situation.

I must report my personal knowledge and experience with Don Hodel has been quite the opposite. I can say that Don Hodel consulted not only with regional Governors but he was constantly consulting with representees of both the House and the Senate on all matters relating to keeping the parties informed on important policies and decisions.

I think we can all confess to the fact that a great deal of frustration has arisen out of the important decisions on the WPPSS financial situation but I think criticism of Don Hodel, in my mind, on this subject is a continuation of the finger pointing which has gone on for several years now which has stymied in many ways a development of real solutions to this regional financial problem.

I don't think it is fair or accurate or logical to try to put the finger on Don Hodel as a person who is responsible for this disaster on the WPPSS projects in the Northwest.

Mr. Chairman, I could utilize much more time which I will restrain myself from doing in giving you the attributes, the record of performance, the outstanding personal character and my total confidence in this man to give the Department of Energy dynamic leadership with special emphasis on conservation and to have an open shop there in which members or those that will oppose him today will be just as welcome to his office for consultation and for information as those whose organizations may support his confirmation.

I am very proud of this Oregonian and I would like to yield to my colleague.

The CHAIRMAN. Senator Jackson suggests, and I concur, that it would be appropriate to hear from the junior Senator from Oregon, Senator Packwood, who is chairman of the Commerce Committee.

STATEMENT OF HON. BOB PACKWOOD, A U.S. SENATOR FROM THE STATE OF OREGON

Senator PACKWOOD. Mr. Chairman, there is little about the abilities of Don Hodel that this committee doesn't know. They have dealt with him for a long period of time in his capacity when he was at Bonneville and in his capacity now at the Department of the Interior and I don't need to second the comments made by Senator Hatfield or elaborate on the things that Senator McClure has said.

I can bring a personal viewpoint of Don Hodel having known him now for 35 years. He and I were in high school together. We shared the same forensics teacher and the same debates. We split a bit when we went off to college and he went to Harvard and I stayed in Oregon and then we switched in law schools and I went east and he came back to the University of Oregon.

But during all of that time, we kept our acquaintance and we soon joined hands in common political endeavors in the late 1950's and continued that relationship all during the 1960's including belonging to a toastmaster group who had as its singular requirement for membership that you had to be a Republican and active in politics. But beyond that, you could join.

We spent 10 years in that together. I had the good fortune until about 3 or 4 months ago to have my Portland office in the Interior building which houses the Bonneville Power Administration. So, as I would ride up and down the elevators, I would frequently hear the comments of the career employees about the different Administrators that had served and some of these employees had been there since Bonneville had started.

It would be a very unusual comment to find any of them saying that there had ever been a better Administrator than Don Hodel both in terms of his foresight and in terms of his relationships with the employees. I saw him go through some trying times in those circumstances.

I recall specifically the era when some nut was blowing up the Bonneville Power towers and threatening Don Hodel's life at the same time. For a fair period of time, the man was not caught and succeeded in blowing up some towers. Don was under constant police protection.

I remember one night Georgie and I were at their house, just the four of us for dinner, and as we left Don was checking the hood of his car to see if a piece of gravel that he had left on it was still there indicating that the hood had not been opened while we had been having dinner and the possibility of a bomb being planted. Indeed as we left, there was still police security.

Eventually the nut was caught. The way that Don Hodel handled that problem and handled it openly with the press and achieved cooperation from the press at a time when press cooperation was very critical to the catching of the criminal was an incredible act of watching a political appointee deal with the press whose normal inclination is to say everything should be exposed and to see them work in common concert for the ultimate public good. It is a high accolade to his ability.

Georgie and I count Don and Barbara as among our closer friends in this country and in this life. I know that he will have those who will testify against him. I will be surprised if anyone testifies against him as to his personal character or integrity or honor or ability is concerned. I understand differences of opinion. We all have them. We all have in the past, we all have in the future, and that is part of the democratic process.

I can simply say to those who will testify in opposition to Don that they will first find a perpetual open door in his office no matter how hard they may have fought his nomination. Second, they will be, I think, pleased to discover that they have many things that they will agree upon and when they do, they will not have a more tenacious ally than Don Hodel. They will have a number of things that they will disagree on and they will find that they will seldom have a tougher opponent but I think in honesty they would have to say they will never have a fairer one or one who ever did an indecent thing in terms of the battle.

The Government is lucky to have a man of this caliber. I would urge this committee to give this nomination speedy consideration and refer to the Senate floor so the country may have the privilege of this man occupying the office with the full confirmation of the Senate.

Thank you.

The CHAIRMAN. Thank you very much, Senator Packwood.

Senator Jackson.

STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator JACKSON. Mr. Chairman, I will support the confirmation of Donald Hodel as the Secretary of Energy. Having known Mr. Hodel for some 13 years, I know there are many issues on which he and I will disagree but I am also confident that I can carry on a dialog with him and respect if not agree with the logic of his arguments.

In this vein, I am hopeful that Secretary Hodel can restore to the Office of the Secretary two missing but sorely needed qualities. First, national energy policy must be built on something more than mere rhetoric. We need a willingness to rely on reason and competent analysis not just ideology, in facing the energy issues.

Second, as Secretary Hodel is himself a public servant of 10 years Federal service, I think he can restore to the Department a sense of dignity and respect for the career public servants who comprise the agency.

Amidst all the proposals for dismantlement, reorganization, merger, and other terms for DOE's self-destruction we need a manager, a good administrator who can pull the agency back together.

Don Hodel has proven himself to be a capable manager and a reasoning and reasonable man. I look forward to working with him during the next 2 years.

The CHAIRMAN. Thank you very much, Senator Jackson.

Are there any others who wish to make a statement at this time? Yes, Senator Murkowski.

STATEMENT OF HON. FRANK H. MURKOWSKI, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. I am certainly pleased to see Don Hodel sitting before this committee this morning and as a very new member of the Energy Committee, I am somewhat moved at the eloquence of my senior colleagues, Senator McClure, Senator Hatfield, Senator Packwood, and Senator Jackson who have had a long and obviously a very fine relationship with Don Hodel.

I as a new member have had an opportunity, too, to work with the Secretary extensively when he was at the Department of the Interior. In view of the fact that I represent a State that is predominately held by the Federal Government in trust, I think that the significance of our relationship has been truly meritorious.

Considering his experience both at the Department of Interior and prior to that which has been addressed already, I don't believe Mr. Chairman that the President could have made a better choice for the position of Secretary of Energy. I am sure that some of the constituencies that we will hear from this morning may not agree with some of the policies the Secretary might be expected to pursue, but I don't believe based on my experience and that of other people from our State, they can dispute the sincerity, the dedication nor the willingness to listen to various diverse points of view.

Mr. Chairman, I am certainly looking forward to the confirmation of Mr. Don Hodel. Thank you.

The CHAIRMAN. Thank you very much. Are there any others?

[No response.]

The CHAIRMAN. If not, our first witness is Senator Max Baucus from the State of Montana. Max, you are always welcome before this committee.

STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. Thank you, Mr. Chairman. Mr. Chairman and members of the committee, I appreciate very much this opportunity to testify on the nomination of Mr. Hodel to be Secretary of Energy particularly following the remarks of Senators mentioned by Senator Murkowski of Alaska. I know Senator Hatfield, Senator Packwood, Senator Jackson, and you, Mr. Chairman, have had deep personal relationships with the nominee. I respect that very much.

In addition to those statements, Mr. Chairman, as a representative of a State in the Pacific Northwest and because of Mr. Hodel's association with the BPA, I am particularly interested in his nomination as Secretary of Energy.

As you know, I have expressed strong reservations about the nomination to the committee. I want to encourage you not to miss the opportunity provided by these hearings to address once and for all the questions that are being raised by me and other witnesses throughout the day.

No one should doubt that this nomination is controversial. As evidence, I can point to substantial interest in my home State. Around the region, editorial opinion is divided—with such major newspapers as the Seattle Post-Intelligencer and the Idaho Stateman having expressed opposition.

I want to emphasize that the questions and issues I raise today are not intended as personal charges against Mr. Hodel. I met with him yesterday and am convinced that he is a congenial, sincere individual; and I know that colleagues in the region whose opinions I respect are supportive of him. He will be a sincere, relentless spokesman for the Administration energy policy.

Nonetheless, the nomination raises serious questions, some old, some new, questions that I believe we should address before conferring final approval on him.

My interest in the nomination arises from increasing concern that, beginning in the 1970's, BPA acquired a reputation for ignoring many residents of the Pacific Northwest.

Mr. Hodel was Assistant Administrator of the Bonneville Power Administration from 1969 to 1972. He became Administrator in 1972 and served there until 1977. This period proved to be especially troublesome for the region.

It was during this time that BPA accepted without independent verification utility projections that showed imminent shortages of electrical energy. In fact, BPA issued notices of inability to supply power that convinced many cooperatives to sign contracts supporting the WPPSS nuclear plants. Subsequently, WPPSS has proven to be a financial mistake. A combination of cost overruns, demand shortfall, inadequate BPA oversight, and technical problems have resulted in serious questions about the ability of our region to pay the WPPSS debt.

Throughout this period in the Northwest, there were those who pointed to energy conservation and other alternative energy sources as the lowest cost solution to our problems. Their counsel was not accepted. In fact, they were all too often derogated as extreme obstructionists.

This unfortunate polarization of a region which badly needed a consensus energy policy was driven by remarks from the highest levels of the BPA. I understand that Mr. Hodel has had a change of heart on this matter and I will be interested to hear his views on the Portland City Club speech in this hearing record.

Citizen groups in the region also felt that BPA tended to operate in a secretive fashion, even refusing to release its detailed, contracted energy conservation study that suggested the region could undertake substantial, cost-effective conservation efforts. Some of the same groups were forced to sue in order to obtain public discussion of a dramatically revised BPA role in the region.

In short, the administration of Mr. Hodel at BPA was not an unmixed success. Its legacy is a region seriously divided on energy policy and perilously close to major bankruptcies brought on by the WPPSS mess.

In sum, I would encourage the committee to probe very carefully a number of issues concerning Mr. Hodel's past and future handling of critical energy matters.

First, what was Mr. Hodel's role in the WPPSS nuclear plants? Whoever made the mistakes, we will be paying billions of dollars for them in coming years and a good number of co-ops are likely to go bankrupt because of it. We must learn from the error so it can be avoided in the future. What could Mr. Hodel have done differently and what was learned from that experience?

Second, what future role does Mr. Hodel intend to play in the resolution of WPPSS? Does he have any suggestions on how we can get out of the mess?

Third, has Mr. Hodel any observations on the unfortunate polarization of the region's energy debate, spurred in significant part by his own remarks while administrator of the BPA? How will these things be different as he moves to head the Department of Energy?

Fourth, has Mr. Hodel any plans to press energy conservation at a vigorous pace, or are we to treat energy conservation simply as a passing fad? What specific changes might be expect in DOE's pursuit of energy conservation?

Fifth, did BPA suppress the 1976 Skidmore, Owings, Merrill Energy Conservation study? Did the agency compare utility forecasts with other available forecasts such as that compiled by the 1975 Washington State University forecast? We know the forecasts accepted by BPA were too high and that this has caused significant problems. The question is whether BPA made a solid effort to determine the quality of power forecasts before committing the region to a very expensive series of nuclear investments.

Sixth, I urge the committee to seek written testimony from those public utility districts that are now suing BPA. They are alleging that BPA coerced them into financing the WPPSS plants. Were they, in fact, unduly pressured?

There are, of course, broad areas of concern arising out of Mr. Hodel's service at the Interior Department.

For example, what was Mr. Hodel's role in the Powder River basin coal lease sale, a sale which was questioned by the Office of Technology Assessment earlier this year? Did it make sense to lease the coal? Did the public receive fair value for it?

I will not belabor the point. My hope is that the committee will take the time to review the concerns raised today before sending the nomination to the floor.

Mr. Chairman, I appreciate the opportunity to be heard on this nomination. I will carefully review the transcript of the hearing before deciding on any further action on the nomination.

I would also appreciate the chance to work with you, with other concerned members of the committee and staff, in developing additional followup questions that may arise from the record established here today.

Thank you very much for the opportunity to testify.

The CHAIRMAN. Thank you, Senator Baucus. Do any members of the committee have any questions they wish to address to Senator Baucus?

Yes, Senator Tsongas.

Senator TSONGAS. I am a little unclear Max, have you made up your mind on how you are going to vote on the nomination?

Senator BAUCUS. At this point, Senator, I am inclined to vote against it because BPA as a semiautonomous agency is an agency which is virtually unaccountable to the public and unless we can find a way, one way being not to confirm nominees who have had a role in developing policy which is very detrimental to the country, we have no choice but to vote no on those nominations.

The hearing record today may show that Mr. Hodel is not at all responsible for the glaring mistake as the WPPSS matter and if that is the case, I am open to that and I may vote for the nomination. But at this point because based on what I know of those series of events, I will vote against the nomination.

The CHAIRMAN. Thank you. Senator Bumpers.

Senator BUMPERS. Senator Baucus, as I understand it, Bonneville is a purchaser of power from WPPSS, is that right?

Senator BAUCUS. Senator Bumpers, I am not quite fully understanding of that myself. That is one of the reasons for asking these questions. Yes, Bonneville does buy power, that is correct.

Senator BUMPERS. What I want to know is, first, while Mr. Hodel was administrator of BPA, Bonneville Power, what was his role as far as the decision to construct these plants, and No. 2, once the plants were under construction, what was his responsibility for seeing that those plants came within the money? Apparently there were big cost overruns, poor management and so on. What was his responsibility for that?

Senator BAUCUS. Your first question, what was his role, that I think is a question that you should ask the nominee. That is probably the basic question of this hearing. Second, it is my view that he, as administrator, or as assistant administrator, should have asked some very tough questions of the forecasts presented to him by the utilities in order to determine whether those forecasts were accurate.

At the time, I think the argument can be made that there was a feeling in the country that the power forecasts would continue to rise at very high rates and demand would be high, et cetera, but still, it is incumbent upon the BPA administrator to question those forecasts, I think, very seriously.

Senator **Jackson**. Mr. Chairman.

The **Chairman**. Senator Jackson.

Senator **Jackson**. I think it is important for the benefit of our colleagues who are not familiar with the Washington Public Power Supply System referred to as WPPSS to state that it is a State chartered operation. I think Senator Baucus would agree. WPPSS operated pursuant to the laws of the State of Washington. In fact, the legislature had to authorize and direct that the cost overruns be paid whether that was wise or unwise. The Federal Government has absolutely no connection with the operation as such with the Washington Public Power Supply System. I think you would agree.

Senator **Bumpers**. Does Bonneville Power have anything to do with it?

Senator **Jackson**. No. They have no authority.

The **Chairman**. With one exception, I would agree, and we will get into that later, I am quite certain. I think it is well worth noting at this point, however, that the Washington Public Power Supply System, working with Bonneville to try to meet what was then estimated to be the growth in future demand for electricity in the region, embarked upon a program of building powerplants. The Bonneville Power Administration agreed with WPPSS with respect to the first three of those plants and entered into joint net billing arrangements with WPPSS on those plants. But Bonneville refused to go along with WPPSS on the fourth and fifth powerplants.

I think we can speculate, but I think the speculation might well yield the information that had WPPSS stopped at the point that Bonneville stopped, they would not have gotten into the trouble that they got into.

Senator **Jackson**. But my chairman would agree that under the net billing arrangement, they had no authority to conduct an investigation.

The **Chairman**. They had no direct authority, but they may have had some responsibility, in terms of meeting their responsibility to Bonneville customers, to make sure that the net billing under the net billing contract was not an excessive billing and that they were doing what needed to be done for Bonneville customers as well as for the WPPSS system.

Senator **Jackson**. That is correct, but no authority over management.

The **Chairman**. No direct authority, no direct legal authority.

Senator **Baucus**. It is my hope, Mr. Chairman, that a lot of these points will be brought out at the hearing so that Congress has a better idea as to what actions may be taken in the future with respect to oversight of a BPA or what handles if any we should put on BPA. My view is that we should have a little greater handle. I don't think these issues are fully understood by even residents of the Pacific Northwest let alone the rest of the country.

Senator **Jackson**. I couldn't agree with you more. I just indulged in a lot of rhetoric on this.

Senator **Ford**. What was the percentage, Senator?

Senator **Jackson**. No comment. [Laughter.]

The **Chairman**. I might say to my colleague from Montana that the relationships that did exist, and some of the problems to which the Senator has made reference, were dealt with in the Northwest Power Act. We have quite a different situation in the Northwest today, in terms of the relationships of entities, as a result of the passage of that legislation.

So some of your concerns have been met by that legislation. I understand the concerns you have expressed and appreciate your appearance here today.

Senator **Baucus**. Thank you, Mr. Chairman.

The **Chairman**. Our next witness is Mr. Hodel. Mr. Hodel, before you begin your statement, the rules of the committee require that all nominees be sworn in connection with their testimony. In addition, all nominees are asked four questions. Before you begin, would you rise and raise your right hand and be sworn?

[Whereupon, Mr. Hodel was duly sworn by the chairman.]

The **Chairman**. Thank you, Mr. Hodel. Will you please be seated? These four questions are asked of all nominees for positions in the administration. I would like to ask these questions of you.

Will you be available to appear before this committee and other congressional committees to represent departmental positions and respond to issues of concern to the Congress?

Mr. **Hodel**. I will.

The **Chairman**. Your informational statement has been submitted to the committee. However, it is required that this statement be made public unless the committee decides that special circumstances justify an exception. Do you have any objection to the publication of your informational statement?

Mr. **Hodel**. I have no objection.

The **Chairman**. Mr. Hodel, are you aware of any personal holdings, investments or interests that could constitute a conflict of interest or create the appearance of such a conflict should you be confirmed and assume the office to which you have been nominated by the President?

Mr. **Hodel**. My investments, personal holdings, and other interests have been reviewed both by myself and the appropriate ethics counselor within the Federal Government. As set forth in exhibit 3 to the informational statement I submitted to the committee, I have taken appropriate action to avoid any conflicts of interest and in light thereof, there are no conflicts of interest or appearances of those thereof to my knowledge.

The **Chairman**. Are you involved in, or do you have any assets held in, blind trusts?

Mr. **Hodel**. No.

The **Chairman**. Thank you very much, Mr. Hodel. You may proceed with your statement.

STATEMENT OF HON. DONALD PAUL HODEL, NOMINEE TO BE SECRETARY OF ENERGY

Mr. **Hodel**. Mr. Chairman, I would like to depart from my prepared statement only briefly to thank the very gracious statements that have been made here by yourself, Senator Hatfield, Senator Packwood, Senator Jackson and Senator Murkowski.

I feel that there was a theme running though those statements and it was that I am a person who is prepared to be open to divergent points of view and I hope that as we talk today, that that will be apparent. That is my intention. It is my desire. I hope that we will have an opportunity to delve into some of those areas of concern that have been raised by Senator Baucus.

It is a pleasure for me to appear before you today as President Reagan's nominee for the position of Secretary of Energy.

Let me emphasize I recognize that, as Secretary, I am and will be accountable to this committee and to the Congress. I am pleased to have this early opportunity to present myself to you for examination. Congressional oversight plays an important role in our system of government, and I look forward to working with the Congress in finding solutions to the problems we face and in meeting the important challenges ahead.

In my prepared remarks this morning, I will set out for you aspects of my personal background and experiences which have influenced my approach to government and energy, some views regarding the management of the Department of Energy, and some of my philosophy and goals with regard to energy—particularly my desire to work with you and others toward a broadened energy consensus in the United States.

BACKGROUND AND EXPERIENCE

In my first appearance before you in February 1981, I stated that, as a westerner born and raised in Portland, Oreg., among the major influences of my boyhood were a love of the outdoors and a profound appreciation for both rights and obligations attendant upon citizenship in this great country.

Those early influences have had an impact throughout my subsequent career. As a student of government, a lawyer, and a private citizen, I developed an early appreciation of the values of a democratic society. I have been drawn toward public service. In my public service career I have been particularly mindful of the need for public servants to have honestly held convictions and, at the same time, be able to strike an appropriate balance between competing interests and needs.

I spent 8 years with the Bonneville Power Administration, first as deputy administrator and then as administrator. I arrived at Bonneville in the middle of the effort to create the hydrothermal power program, which was a unique amalgam of public and private and Federal power interests in the region. It had as its goal the transition from virtually an all hydroelectric based system to a mixed hydro and steam-generated electric system. That transition was not mandated by edict of the Federal Government, but it did come about because of the development of a broad consensus throughout that region which involved virtually all interests in the electric generating system.

While at BPA, I served on the board of directors of the Western Systems Coordinating Council and as secretary-treasurer of the National Electric Reliability Council, as well as on the board of directors of the Electric Power Research Institute.

In 1978, after leaving BPA, I was elected president of the National Electric Reliability Council, and prior to my joining this administration, I rendered consulting services to various producers and users of electric energy. All these experiences have helped considerably to broaden my energy horizons beyond those problems confronting the Pacific Northwest to an understanding of energy issues in the Nation as a whole.

Service on the U.S. National Committee of the World Energy Conference, while at Bonneville and subsequently, provided me the opportunity to participate in four world energy conferences which occurred during the period of 1971 through 1980 and to learn about energy problems on a global scale, rising above the parochial interests of individual nations.

OVERVIEW OF ENERGY PERSPECTIVES—SIGNIFICANCE OF ENERGY POLICY

It is my perspective, based upon these experiences, that energy has an importance far beyond that of most commodities. It is a significant component of every aspect of the U.S. economy. Without energy, our economy does not run, without a viable economy, this Nation cannot be strong and its people united; without a strong and united nation, the defense of the free world is threatened. It is clear to me that energy is intimately bound up in maintaining the free society that we cherish.

Consequently, energy policy is not something any of us ought to take for granted. A purposeful energy policy is crucial for this country and for the rest of the world. What Congress and the administration do about energy has global implications, for although what we do in the United States may cause only ripples on the energy shores of our society, it may cause tidal waves on the energy shores of other nations especially in the developing countries.

BALANCED ENERGY RESOURCES

If we have learned anything from the 1970's, it is that overreliance on any one energy source is unwise. The oil embargo of 1973 and the price shock of 1979 made the Nation dramatically aware of its dangerous dependence on foreign oil. For nearly a decade, the country has struggled to work its way out of that dependence.

Moreover, in today's debate over form and content of our energy system, we ought not to assume that all elements are somehow frozen and unchanging. If we look to its lessons, history teaches us that a dominant fuel or technology is discovered, flourishes, prevails, and then wanes as another is discovered, flourishes, and so on. This Nation, once almost wholly dependent upon wood and waterwheels for its energy sources, moved to steam engines, fueled by coal, then by oil, then again by coal, and so on.

My own observations have confirmed my belief in the need for balance. I have seen that those electric generating systems dependent upon a single fuel tend to be vulnerable, as we were in the Pacific Northwest when we were all hydroelectric, to the vagaries of weather or of fuel supply. Those electric systems which had a mix of resources found themselves always better able to meet the bulk of their requirements and to cope more easily with their temporary problems.

My philosophical commitment to the need for a balanced approach to energy resources is longstanding. For example, in a 1975 speech as BPA administrator, I stated that, "we are going to have to have additional generating resources made up of all of the available alternatives," and I warned that, "a society which, in a vacuum, decides to foreclose one or another of those options may very well be cutting its economic throat." Time and again I stressed the need for a broad mix of energy resources, ranging from conventional to renewable to exotic. I have argued before, and believe now, that no one approach and no one fuel can or ought to be depended upon to meet all the needs of a diverse country such as ours. What works in New England may not work in the Southwest. Resources available in the Pacific Northwest may not be available in the South. I happen to believe that recognition of the inherent value of diversity should be one of the bases upon which we can build an energy consensus in this country.

CONSERVATION AND RENEWABLES

An important area which I would like to emphasize today is my attitude toward conservation. As far back as June 1974, I publicly stated as BPA administrator that "energy conservation has become a national imperative." In 1975, I urged that "we must—both as energy suppliers and energy consumers—totally reevaluate how we use energy in its various forms. Neither our individual pocketbooks nor society as a whole can any longer afford to waste our energy resources."

Before it was common or fashionable to do so, I gave every emphasis to the concept that we needed to treat energy conservation "as a resource." By that I meant we needed to pursue energy conservation with sufficient enthusiasm and engineering technology to be able to predict that a given sum of money invested in energy conservation would provide us with a predictable level of energy return. Speaking to the American Public Power Association in early 1977, I said once again, "we must put conservation to work, and we must manage it just as we manage these other resources. We must be able to plan it as a resource—target the amount needed and take identifying steps to achieve it by a needed date."

I am gratified to see that in subsequent years, many utilities and organizations have undertaken programs which are very much compatible with that approach. We have seen repeatedly where an investment in conservation has returned several times the energy of a similar investment in conventional powerplants.

With regard to conservation and the use of renewables, I believe the most effective means of obtaining real gains will be through the incentives of the marketplace. As we look at the history of price controls, we find they kept the price of oil and gas at artificially low levels.

There was simply no economic incentive at such levels for most consumers to undertake conservation measures or to take advantage of renewable resources, such as solar energy. When, however, gasoline, electricity, and home heating oil prices rose sharply in late 1979 and in 1980 in response to the substantial increases in the price of imported oil, increasing numbers of industries, business concerns, and individual citizens began acting in their own economic self-interest by implementing conservation measures.

As a result, I believe conservation is taking hold, and that its greatest impetus has been the progress toward a rational, market-based pricing structure for energy. Continued subsidies or regulations for those who otherwise would act to conserve or develop renewable resources is not necessary and not cost effective.

Let me emphasize, however, that I personally am satisfied there should and can be an appropriate Federal role in the area of conservation and renewable resources. I look forward to working with this committee and with the Congress in a common effort to articulate and to fund the proper Federal role as a means of providing that cornerstone from which the economy can make use of conservation and renewables in a cost-effective manner. This effort should be compatible with the broader research efforts supported by the Department and will continue our involvement in long-term, high-risk, high-payoff research and development.

I am confident that 230 million Americans can be salesmen and proponents of energy conservation and renewables—and we will have provided much of the basic knowledge and tools for the job. That is an exciting prospect, that is a system which will work, that is a system which will bring the greatest amount of cost-effective conservation and renewables into being.

MANAGEMENT OF THE DEPARTMENT OF ENERGY

My performance as Secretary of Energy will depend, of course, not only upon the key elements of my energy philosophy, but also upon my beliefs concerning proper management of the Department.

LEADERSHIP

I come with an acute awareness of the need to provide strong management and strong leadership. If there is anything I hope I have acquired during my years as administrator at BPA and as Under Secretary of the Department of the Interior, it is the skills needed to manage large, multigoal organizations. I hope to use those skills to make the Department of Energy an agency in which we all can take pride.

I intend to conduct the Office of Secretary in a collegial, open manner—and to be available to all viewpoints and to all organizations. Ultimately, I intend to employ a management style which is conducive to forging an energy consensus. But I also intend to be decisive, to make decisions and recommendations, and to implement those which are my responsibility as quickly as is appropriate.

BUDGET

I intend to use my best efforts to support enactment of budget proposals that implement the goals of the President. However, if the Congress chooses not to concur in Administration budget proposals, and the President signs enacted appropriations, they become the law of the land. Once such laws are passed and signed, I will assure they are faithfully executed.

PERSONNEL

I intend to appoint or recommend the appointment of, people in the Department of Energy, when vacancies exist, who are committed to the goals of the President, who are able, devoted and professional.

Equally as important, I have a high regard for the professional, career Federal employees. I have had the privilege of working closely with career personnel over the 10 years I have served in the Federal Government and have nothing but admiration for the competent professional who understands the job and is looking for strong management direction in order to proceed with the job in the most effective way.

In order to have career professionals function effectively, it will be one of my top priorities to foster a stable atmosphere within the Department. I recognize this is a difficult task in light of budgetary pressures and program uncertainties, but I will make every effort, and I expect all other political appointees within the Department to make a similar effort, to seek stability for the career professionals within the Department of Energy.

MAJOR POLICY ISSUES

With that background as to my basic energy and management philosophies, there are a number of major policy issues confronting the Department which I would like to address.

MERGER

One of the first issues is the status of the Department itself. I view the Department of Energy as an interim organizational step along the way in the maturing of our national attitude toward energy. The initial organizational effort following the 1973-74 oil embargo, which resulted in the Federal Energy Administration and the Energy Research and Development Administration, reflected the national impulse to regulate a return to lower prices and plentiful supplies.

The 1977 creation of the Department, in turn, was prompted by the understandable desire to bring together in one place the very substantial Federal programs which were prompted by the earnest hope to achieve energy independence.

The manner in which we organize the Federal effort to assist in the meeting of national energy objectives necessarily will change as circumstances and the basic thrust of federal policies evolve.

Just as the creation of the Department of Energy added a dimension to energy policymaking unavailable to the Government within either the FEA or ERDA, I feel that, although we continue to need an agency devoted to energy matters, it no longer should be a separate Cabinet-level agency devoted only to energy.

From the beginning of his administration, President Reagan has stressed that his economic and trade policies are inseparable from his energy policy and that each of these policies must be developed in concert with the others. The organizational separation of the Government's energy activities has made this needlessly difficult. The solution, it became clear to us, was fusion of the Department of Energy with economic and trade policy through merger with the Department of Commerce.

With the concurrence of the Congress, many functions previously performed by the Department of Energy already have ceased or have been reduced in scope. In my mind, there remain five critical missions of the Federal Government, which successfully can be carried forward into the merged department:

First, completion of the Strategic Petroleum Reserve as a primary method to achieve emergency preparedness.

Second, development of long-range, high-risk, high-payoff energy technologies which industry is unable or unwilling to undertake.

Third, development of fundamental scientific and engineering knowledge which can be the basis for new energy developments or for the assessments of the health, safety and environmental effects of energy developments.

Fourth, continuation of defense programs for development, testing, and production of nuclear weapons and the naval reactor program.

Fifth and finally, leading the Nation toward faith in the marketplace to solve energy problems and away from the failures of Government intervention.

Pending legislative enactment of the President's merger proposals, I shall administer the Department of Energy in conformance with the statutes which govern its structure and operations.

NATURAL GAS DECONTROL

Consistent with the last-mentioned mission of the Federal Government, the administration's short-term goals include increasing production of oil and natural gas and reducing regulatory constraints that have created dislocations in the natural gas market.

It is clear to me that regulation of natural gas has created severe problems that deserve a careful and comprehensive review. I have heard from many of the Members of the Congress relative to their concern over the tangled web of natural gas regulations and how the escalating prices of natural gas are hurting their constituents. I intend to be involved in the process of reexamining natural gas regulation and in seeking a solution.

It is clear that the marketplace is distorted by the many tiers of natural gas pricing. The mix of completely regulated prices, partially deregulated prices, and fully deregulated prices has created substantial incentive for producers to seek deep gas first, because it is not price regulated, and to refrain from drilling for less costly gas, the price of which is regulated.

The conservation ethic that has been spreading in our country, together with lower levels of economic activity, served to reduce demand for all fuels. Some pipeline companies found their demand decreased to the point where they had too much gas to sell, but they were locked into the take-or-pay contracts at higher prices which they had negotiated with producers during times of shortages.

What has happened is that less expensive gas is being shut in while pipeline companies continue to buy expensive gas, pursuant to the obligations of these more recent contracts.

I could go on with descriptions of other problems caused by regulation of natural gas, including a restatement of the conflicting opinions as to what will happen in 1985 when many categories of new gas are deregulated, while old gas remains regulated, albeit at steadily increasing prices.

What we need is to eliminate the regulatory morass which effectively prevents natural gas prices from responding to market pressures which in present economic circumstances might result in lower prices to consumers. This is an area where earnest effort is needed by many of us, and the sooner the better.

While I am satisfied that more regulation is not the answer, I am open to your suggestions as the administration proceeds to develop its legislative proposals on this subject.

In other areas, I sense we already are moving in the right direction.

EMERGENCY PREPAREDNESS

I recognize the bipartisan concern of this committee that the United States be prepared to meet energy supply disruptions. You may be assured that I personally am committed to the continuation of the policies which are aimed at preparing for disruptions should they occur.

During my tenure as Secretary, it will be one of my primary objectives to see to it that programs for the Strategic Petroleum Reserve, the Naval Petroleum Reserve, and the development of response mechanisms to facilitate the operation of the markets retain their high priorities as measures to deal with the adverse effects of potential fuel shortages.

While recognizing that there may be differences over various means to carry out our common policy, I pledge to work closely with this committee and the Congress to attempt to bring about a consensus on this vital subject.

NUCLEAR ENERGY

I fully support the Administration's program to revitalize the nuclear industry in this country so that it can be a part of this Nation's energy mix. Government, the nuclear industry, and the Nation's electric utilities should endeavor to streamline licensing procedures for nuclear powerplants, complete the development of the nuclear fuel cycle, including reprocessing, and begin to use the technology already at hand to dispose of nuclear waste.

I support the current legislative efforts to resolve the nuclear waste issue, and I hope that can be resolved now, not in the next Congress. We also must complete the research and development necessary for the breeder reactor to show the world that the technology is ready for commercialization when the market chooses.

COAL

Coal, likewise, must play an important part, both burned as coal and as a feedstock for a synthetic fuels industry. We must continue to place a considerable emphasis on developing new data, techniques, and technologies—from coal cleaning to combustion, to advanced environmental controls—all necessary to produce the information and knowledge which will allow industry to bring cost-effective and environmentally acceptable uses of coal into the supply mix.

Coal, as our Nation's most abundant fossil fuel, should move to its proper role in the overall balance and diversity of energy supplies, both in this country and worldwide. Participation from the private sector in individual projects will be sought not only to increase the effectiveness of Federal expenditures but, more importantly, to assure that the efforts in this area are appropriately focused and responsive.

INTERNATIONAL AFFAIRS

Because of my previously mentioned awareness of the critical linkage between energy policies and international affairs, it is my intention that the Department of Energy, working closely with the Secretary of State and the National Security Council, continue its efforts to forge close cooperation with key energy importing and exporting nations on a wide range of international energy policy issues.

CONCLUSION

By having spoken directly today to my basic energy and management philosophies and to a limited number of major issues which now confront the Department of Energy, I do not mean to suggest there are not other highly significant energy matters which deserve the considered attention of this committee, the Congress, and the administration, including myself. Rather, my intention has been to focus on the principles which will guide me as Secretary of Energy and to provide the committee with concrete ideas as to how those principles would be translated into approaches for the solution of specific problems.

More than anything, I wish to emphasize my abiding conviction that we will not succeed in our mission unless we engage in a concerted effort to forge the broadened energy consensus about which I spoke at the opening of my remarks.

That consensus would be premised upon the beliefs that we have neither an immediate "energy crisis" nor long-term insoluable problems; and that by working together—consumers and suppliers of energy, citizens whose concerns range from protection of the environment to how much they pay for gasoline, as well as a Federal Government in concert with the marketplace—we can approach energy issues in a manner conducive to preserving and fostering our Nation's fundamental strengths.

It is my intention to remain open and accessible to a broad spectrum of views, and I trust my actions as Secretary these past few weeks are an appropriate manifestation of my commitment in that regard. Consensus requires no less.

Mr. Chairman, this concludes my formal remarks. I have submitted detailed information on my qualifications, experience, and financial affairs. I shall be pleased to attempt to answer any questions you and the committee may have.

Senator **Bradley**. Mr. Chairman, would you state what is the procedure? Do we have time limits per questioner or should I come back around 5 o'clock this afternoon?

The **Chairman**. I was going to suggest to the members of the committee that in view of the interest shown by their attendance here, and I am sure an active interest in asking questions, that in order to share the time equitably, we impose a 10-minute time limit on each member on the initial round of questioning. I hope that is satisfactory to the members of the committee.

Senator **Ford**. Mr. Chairman, do we get the 10-minutes based upon time of arrival.

The **Chairman**. You mean in rotation?

Senator **Ford**. Yes, in rotation based upon time of arrival.

The **Chairman**. I wasn't keeping track of when people arrived. I am sorry that I didn't do that. Perhaps I should have, but I didn't anticipate that problem.

Senator **Ford**. On the Commerce Committee, we do. They pass over seniority in favor of time of arrival and I was wondering if we were going to do that here.

The Chairman. You are not very far down the list. You will do all right.

Senator **Ford**. I am going to be like Senator Bradley though and count one, two, three, four—and be back in about an hour and fifteen mintues.

The **Chairman**. Let's use the time we do have and with that, I will yield to Senator Jackson.

Senator **Jackson**. Mr. Hodel, your statement advocates development of a system of rational market-based pricing for energy. In that connection, how do you feel about Canadian gas export prices, $4.94 per 1,000 cubic feet which is clearly beyond what our market will bear? Are you willing to reexamine the U.S. policy of insistance upon a single uniform border price?

We in the Northwest, as you know, if I can ask you this parochial question——

The **Chairman**. It is not parochial. It is in the national interest.

Senator **Jackson**. It will be if we get the right decision. We have been hard hit in that regard. The price of natural gas over the last few years has gone from Canada from around $0.50 or $0.60 to $4.94 and the facts are that industry after industry has moved out of the use of gas and turned to other sources, even residual fuel, that is much cheaper.

I would like to have your comments on that.

Mr. **Hodel**. This raises the question, Senator, with regard to the whole pricing of gas. Dealing with the border question alone, to the extent that we are bound by contracts, I have substantial reservations of placing the United States in a position of becoming an unreliable trading partner.

By the same token, it appears to me that we have ongoing relations with Canada in a number of areas and that would include energy supply and we should certainly be looking at the opportunity to redress those imbalances.

At this moment, I don't have any more specific personal reaction to that matter.

Senator **Jackson**. May I point out that I understand that the contracts have provision for Government action which would change it and could be changed without violation of the contract. My staff expert here tells me that is the case and I would challenge that. [Laughter.]

And she is both a lady, and a distinguished lawyer.

Mr. **Hodel**. May I say Senator, in reliance upon that distinguished advice, it would be——[Laughter.]

Senator **Ford**. That statement was in lieu of a raise however. [Laughter.]

Senator **Jackson**. There is nothing like Kentucky input. As you know, various other areas along the border, Mr. Hodel, have a base of low cost and over half of it is by contract and it goes way back and it places our people in the Northwest in a very difficult economic situation.

I must say that our friends in Canada are most sympathetic and I think the Canadians want to do something about it to make those adjustments.

Mr. **Hodel**. Senator, as you can tell, I am not aware of the contract provisions; but in light of this advice, I can assure you that we will look at that matter and pursue it. I think we will be in further touch with you and the committee as we look into that matter further.

Senator **Jackson**. All right, sir. Do you know of any reason why we shouldn't be filling the Strategic Petroleum Reserve by at least 300,000 barrels per day? As you know, this summer we enacted the Energy Emergency Preparedness Act of 1982 which mandated a Strategic Petroleum Reserve fill rate of 300,000 barrels per day unless the President made a finding that such a fill rate would not be in the national interest.

If that finding is made, then the minimum fill rate is 220,000, as you know, barrels per day, except that if funds are available to fill at a higher rate than 220,000 barrels per day, then the mandated fill rate is the highest practicable fill rate achievable.

The committee staff was informed by DOE recently that the Department is already planning to fill at only 220,000 barrels per day in fiscal year 1983, yet there is no Presidential finding in effect and there are sufficient funds to fill well above 220,000 barrels per day in fiscal year 1983. Would you have your general counsel provide the committee with a legal memorandum on how the DOE can legally limit the fiscal year 1983 fill rate to 220,000 barrels per day?

Mr. **Hodel**. Yes, I will.

Senator **Jackson**. I think that is important, Mr. Chairman, because the committee has taken a long and consistent and, I believe, virtually unanimous position on the importance of moving on the Strategic Petroleum Reserve. It is one of the real deterrents that we have to rash, unreasoning action on the part of some of the producers who would move in an irrational manner to cut off oil.

Next, what is your view of the proposal to transfer by Executive reorganization the national labs from the Department of Energy to the Department of Commerce? This is the proposed reorganizational plan. I want to say as one who served on the joint atomic energy committee that those labs are very important. We are talking about Los Alamos, Livermore, and so on. The others are all included in it.

I feel very strongly that buffeting these people around from department to department is a big mistake. It is a big part of your budget as you know.

Mr. **Hodel**. I have been advised since arriving at the Department of Energy that we have consistently as a Department represented to this committee, its staff, other Members of the Congress that we would not take administrative action to effect any of the reorganization proposals that are before the Congress for legislative action.

To the best of my knowledge, in what checking up I can do, discussions that may have sounded in those terms never sounded to me as if they were in terms of administrative action, but were brain-storming about possible legislative alternatives. I cannot say that that was everyone's intention. I can say that, as far as I understood——

Senator **Jackson**. You are speaking personally?

Mr. **Hodel**. Personally. My personal understanding related to possible legislative activity.

Senator **Jackson**. I hope we can have that support because I think it will have a real adverse effect.

Mr. **Hodel**. I appreciate the opportunity to answer that question, Senator, because I encountered concern about this issue numerous times in my visits with Members of Congress.

Senator **Jackson**. Some of our top scientists are lab people and are very disturbed as to where they are going to end up.

Mr. Chairman, I am just going to ask one more because I want my colleagues to have adequate time as well. As you know the Energy Emergency Preparedness Act, going back to strategic petroleum reserve now, requires the President to transmit to the Congress a drawdown plan for strategic petroleum reserve. When will we receive that plan? It is due right now, today.

Mr. **Hodel**. It is my earnest hope and expectation, Senator, that the plan has been or is in the process of being transmitted to the committee because December 1 is the deadline for that plan.

Senator **Jackson**. Sundown?

Mr. **Hodel**. I understand that this is a matter of paperwork and so on, but I hope it is well before sundown.

Senator **Jackson**. Thank you very much. Mr. Chairman, whatever time I have I yield back.

The **Chairman**. Thank you very much, Senator Jackson.

Senator Warner.

Senator **Warner**. Thank you. Mr. Chairman, I would like to return to the subject of coal. I regret to say that in my judgment the administration has not come up with the guidance that is needed to try to deepen America's ports. You put stress on the need not only for the exporting of coal but for greater utilization elsewhere in the coastal areas of the United States.

What is going to be your position on the deepening of America's ports?

Mr. Hodel. Senator, I can answer that in a general way this way. Believing as I do that increased exports of coal is an important goal for this administration and for the country, it seems to me that it is imperative that we identify those constraints on that activity; and among them I am advised we have the problem of the ports situation, as well as some of the transportation problems that relate to transporting to large volumes of coal.

We should certainly be seeking ways to make that happen. The details of the proposals at this stage, I understand, are relatively complex. There are more than a few alternative suggestions available. We clearly will prefer whenever possible to have non-Federal sector investment and user fee oriented activity; but at this stage, I don't have a proposal of which I am aware.

Senator Warner. But you would support the concept of user fees which could be applicable to the costs involved?

Mr. Hodel. Yes; I believe I would.

Senator Warner. Now a corollary to the question of coal is, of course, the surface mining. To what extent have you had an opportunity to look at that and the direction the Federal Government should go?

Mr. Hodel. With regard to surface mining, my experience there relates largely to my experience at the Department of the Interior where the Office of Surface Mining and its reclamation requirements and environmental protection program were involved.

I believe that we have the ability in this country now to do significant amounts of coal surface mining if this is the thrust of your question, Senator, and to do so without long-term adverse environmental effects.

Senator Warner. I am referring to the Secretary of Energy's Annual Report dated August 1982 which specifically states, "relaxed surface mining and leasing constraints." Would you be supportive of that policy?

Mr. Hodel. I believe I would have to know precisely which restraints were intended. My intention would be that we should; and as I have indicated, I believe we can provide the protections that are required. I don't think there is any sentiment in favor of relaxing restraints that are crucial to environmental protection.

So I would favor relaxing those restraints which are impediments, but which are not going to have a significant adverse impact on the environment.

I believe with the Office of Surface Mining Program, by putting substantial responsibility to the States, by removing the detailed multiplicity of restrictions that had been imposed by the Federal Government, and going rather to regulations which said these are the results that must be achieved, we have made a great stride in the direction that the Secretary of Energy was apparently recommending in that report.

Senator Warner. Also, as a part of this policy was the recommendation that we provide foreign investment assistance and encourage private sector financing in terms of the export of coal. Would you likewise continue that policy?

Mr. HODEL. I believe I would, yes, sir.

Senator WARNER. Mr. Chairman, I will return with other questions. I will share the remainder of my time with my colleagues.

The CHAIRMAN. Thank you very much.

Senator Bumpers.

Senator BUMPERS. Mr. Hodel, you testified a moment ago that you think our energy policy ought to be one of balance, balance between what?

Mr. HODEL. When I used the word, "balance," in that context, Senator, what I am referencing is, as I said in my opening statement, that we ought to have a mixed energy resource system; and when I say, "energy resource," I include in them conservation and renewables for the reasons I indicated in the opening statement, which were that I think it is important that we not have all of our eggs in one basket.

I think we need to recognize that technologies come and go. We need to be in a position where we have not slammed the door on any particular technology and then find out the world passes us by in that area and that is the technology that should prevail for a 20-, 30-, or 40-year period.

So when I say, "balance," I mean a mixed energy resource system.

Senator BUMPERS. Do you think we need a Department of Energy?

Mr. HODEL. I think we need the functions that are now being performed by the Department of Energy to continue to be performed by the Federal Government, but I feel strongly that they can be effectively carried out in a Cabinet level department which is merged with the Department of Commerce.

I understand clearly from numerous conversations in my courtesy calls, Senator, that that is not a position widely shared by many members of this committee. [Laughter.]

Senator BUMPERS. Have you talked to the President about this position and what he expects of you?

Mr. HODEL. I have spoken to the President in general terms about the——

Senator BUMPERS. How recently?

Mr. HODEL. It must have been the second or third of November, shortly before I was designated.

Senator BUMPERS. How much time did you spend with him?

Mr. HODEL. We spent a few minutes. I tried to recall afterward how long it was, and I hadn't been looking at my watch candidly, but it was 15 or 20 minutes, I would say.

Senator BUMPERS. Had you known him before that?

Mr. HODEL. Yes.

Senator BUMPERS. Had you conversed with him about energy policy before that?

Mr. HODEL. No, I had not.

Senator BUMPERS. You just knew him?

Mr. HODEL. I knew the President. I had attended Cabinet meetings in the absence of the Secretary.

Senator **Bumpers**. What did he say to you about the future of the Energy Department?

Mr. **Hodel**. We discussed the future of the Energy Department in terms, Senator, that I was committed to working to the best of my ability with the Congress to find a way in which we could merge the Department with the Department of Commerce.

Senator **Bumpers**. His official policy so far as energy is concerned is that the Government should only be involved in what we call long-term, high-risk research, based on the proposition that the Government should only be involved in things that industry, for example, probably would not engage in because industry wouldn't find it economically feasible. Do you agree with that?

Mr. **Hodel**. Yes, Senator, but I think it goes also to another point—and that is that it should not simply be something that industry would not engage in because industry believes it is uneconomic and technologically too remote or not seem necessary. I think the Government also has to face that same analysis.

We have some limit to the resources we can apply, so some basic screening must be established; but once you get past that point and it appears to be something which merits pursuit, it becomes a definitional problem and we have a continuous spectrum here from very clearly no dispute high risk, long range, down to things which others will argue are clearly demonstration.

Senator **Bumpers**. Mr. Hodel, the first nuclear powerplant came on stream, I believe, in 1949, 33 years ago. We now have roughly between 70 and 73 nuclear light water plants operating in this country. What is long term or high risk about nuclear power?

Mr. **Hodel**. The closure of the fuel cycle remains an issue of very great concern to the country as a whole and is an item which is of such magnitude and such cost and of such high-level public interest that it appears to be something that cannot be handled by any one utility or even a group of utilities by themselves.

Senator **Bumpers**. Why is it incumbent upon the U.S. Government to finance that? You have General Electric, Babcock & Wilcox, Westinghouse and other companies deeply involved in nuclear reactors and building nuclear plants. This is not all that esoteric. It is not high risk. It may be long term, but it is not high risk. Why should we pick up the tab for that?

As you know the President has only asked for increases in the nuclear budget in energy since he has been President. Everything else has been torpedoed.

Mr. **Hodel**. I have indicated very high concern with regard to the Federal efforts in the nuclear area. It is not clear that the non-Federal sector has the resources or the will at this stage or the ability to finance the assessment of the alternatives and to carry out some of the major projects that are needed.

In addition, it is extremely high risk in another sense, and that is, if you or I today were in the private sector and were considering engaging in any of the activities that relate to the closing of the fuel cycle, one of the first questions we would ask ourselves is, "Dare we invest the tremendous sums of money?" because we cannot count upon the Federal Government's policies to be constant and if they are not constant, we find ourselves 2 years, 5 years down the road——

Senator **Bumpers**. Now you know how the people involved in solar research felt when President Reagan became President.

Mr. **Hodel**. Senator, one of the things that I am acutely aware of, partly as a result of my experience at Bonneville, but also on the Electric Power Research Institute board, is that, where we are dealing with research and moving on into the development stage, one of the least productive things we can engage in is roller coaster financing.

I can assure you that there are those of us who are working for the premise that we need to identify—and that clearly is going to require a consensus with this committee and the Congress—some block of activity in the research and development area however that is defined at which we can make some constant prediction of what is going to be available. We cannot continue to do this, and the shifts of policy, with the shifts of Secretaries or whatever, are not beneficial to that effort. I well recognize that.

Senator **Bumpers**. Do you think solar power has any role to play in our future energy needs in this country?

Mr. **Hodel**. Yes, I do.

Senator **Bumpers**. Do you consider it to be long term, high risk?

Mr. **Hodel**. Parts of it, yes. Some of it, no.

Senator **Bumpers**. Why, if it is long term, high risk, has the President chosen virtually to zap all solar research at a time when the Japanese are going to spend five times as much this year on solar research as we are, and the Germans are going to spend three times as much as we are. When it becomes a viable technology everybody is going to say, "Those dirty Japs have done it again." They will capture the world markets. Even we will be dependent on the Japanese for solar energy.

Does that make any sense to you, Mr. Hodel?

Mr. **Hodel**. Senator, it would be my desire in the review process, both the 1983 passbacks from the committees of Congress which we are now engaged in, as well as the work on the 1984 budget, to take an across-the-board look at the money that we are proposing to the Congress be appropriated for those kinds of activities.

One of the things that I would expect to take a look at is where we are proposing to spend the money and I would hope that as a result of that effort to be able to provide you with a much more definitive answer not to why the President but to why I, would support or oppose particular elements in that budget, recognizing that across the board we have a very severe budget constraint which we are working within at this stage.

Senator **Bumpers**. Mr. Hodel, let me ask you, did you read David Freeman's article in the Post Sunday?

Mr. **Hodel**. I didn't read it, Senator. I did scan parts of it.

Senator **Bumpers**. Well, if you didn't read it, it would be unfair to go into it with you unless I quoted it and I don't have it in front of me right now. Let me go to the breeder. Do you favor the Clinch River Breeder?

Mr. **Hodel**. Yes, I do.

Senator **Bumpers**. One of the reasons the Washington Public Power Supply System is in big trouble with their nuclear plants, completely aside from the cost overruns, is the fact that their projections on needed power for the area have been grossly overestimated.

When the assumptions for the breeder were made, it was estimated that the increased demand for power in this country would be running at around 7 percent annually, whereas, in fact, as you know, to some extent because of the recession, it is now running at about 1 percent.

At that time, the breeder was expected to cost somewhere between $400 and $700 million. Now GAO estimates that the breeder will cost in excess of $9 billion, something like 40 times as much as conventional power would cost. Does that cost figure disturb you?

Mr. HODEL. Yes, on two counts. First of all, if it is true, it is a terribly serious problem. Second, it is my understanding that we do not totally concur in that figure and it may be that it is comparing one base with a different base at the present time, so that the escalation aspect is not quite the same.

That project as you know has been strung out over a number of years and I think with regard to electric utility load forecasts, while there are present increases in some parts of the country actually electric consumption has diminished in recent times.

Senator BUMPERS. I understand.

Mr. HODEL. But the electric forecasts on a national basis still show an average annual growth rate of about 3 percent. This is sharply reduced from the figures that we both were aware of prior to that time. But the National Electric Reliability Council, which accumulates utility forecasts recently indicated that the 10-year forecast shows still a 3-percent growth. They make, obviously, some assumptions about what the economy will do, the rapidity with which it will recover and the extent to which electricity will be substituted for other fuels.

Senator BUMPERS. Mr. Hodel, I am going to come back to this in subsequent questioning, but I do want to ask you this last question. Is there a cost at which you would oppose the Clinch River Breeder and, if so, what is it?

Mr. HODEL. I can answer definitively, Senator. I am sure there is a cost, and I don't know what that cost would be.

Senator BUMPERS. Thank you.

The CHAIRMAN. Senator Nickles.

Senator NICKLES. Thank you, Mr. Chairman. Mr. Hodel, first, I would like to compliment you and I didn't have a chance to do that on my opening round, but I have worked with you for the past couple of years and found you to be very competent in working in Interior and I would expect and predict the same when you are the head of the Department of Energy. I guess along the same line of some of the nuclear questions that were mentioned, and you mentioned that you were a supporter of nuclear power, do you know how long it takes from, I guess, the decision of a utility or company that decides to build a powerplant, a nuclear powerplant, and how long it takes for that to become a reality?

Mr. HODEL. No, and frankly, Senator, I think at this stage nobody knows any longer. The figures that are bandied about are that it may take 12 or 14 years, but really at this stage, what we are talking about is plants that have been in the pipeline for 10 or 12 or 13 years. So to be 98 percent complete, we find that it has taken us 12 years, so we say 12 years. But if we were to start a plant today, it is anybody's guess.

I do know that, in terms of the planning and design and construction aspect of it, other nations are able to build essentially the same designed plants—in fact, they are essentially U.S. designed and engineered plants—in a fraction of the time, 5 and 6 years, in the case of the French and some Japanese plants.

Senator **NICKLES**. In many cases, in about half the time or in some cases less than half of the time it takes in the United States. Is there anything that the Department could do to expedite that, to lessen that amount of leadtime? Leadtime, of course, equates to dollars and, of course, the consumers are paying for the dollars.

Mr. **HODEL**. There is a very high cost factor as you point out, to the delay. Again, when I was at Bonneville, I used to argue that what we ought to do as a society is to agree upon whether or not a plant should be built and once that is agreed upon, if it is agreed, or if not agreed, don't try to build it—let's not continue this process thereafter of seeing how long we can string out the construction because the only loser is the rate payer, the consumer.

Senator **NICKLES**. Is there anything that the Department can do that you know of?

Mr. **HODEL**. The Department is looking at opportunities as to what can be done. As I am sure you are aware, there have been discussions about possible regulatory reform activities but at this point I am not aware of anything that has a substantial consensus as to a quick means of accomplishing those objectives, although they are highly desirable and should be pursued and will be.

Senator **NICKLES**. I would hope that they would be. You mentioned also in your text and I appreciate the comments of the necessity or need to make some changes under the natural gas legislation. Do you have any timetable for possibly a recommendation? I know there has been a draft prepared by the Department of Energy to the President's advisors, are you aware of that and is that going to be coming out soon?

Mr. **HODEL**. We are working closely now with people in the White House to try to develop a plan with which we can approach Congress and to see whether there is sufficient sentiment to proceed. We feel that it is imperative that we move early if we are going to move at all with regard to that.

Only last week, I believe, the President reaffirmed his commitment to moving in that direction as promptly as possible.

Senator **NICKLES**. I would certainly encourage you to do it. There is a lot of inequities as you have kind of touched on in your statement between different values or categories of gas and I think that is one of the things that prompts our Canadian and Mexican problems, et cetera. It prompts one of the dilemmas that we have where you find a lot of gas that is now the cheap gas that is left in the ground and a lot of absurd things have actually come about with the NGPA as it is today.

I think it needs to be revisited as well as the Fuel Use Act which I hope will be done at the same time because again we have the Federal Government saying, yes, you have to be off natural gas by 1990 for industrial customers which is kind of absurd in my opinion in having a Federal bureaucracy or Congress mandating that in our opinion you need to be off of this resource because at that time they thought there was a shortage and now there is not a shortage. It is an improper, I would say, allocation of that resource.

Mr. Hodel. Senator, if I could comment on that briefly. I think you have highlighted something that is very important and that is, we make decisions in this energy area based upon our forecasts. I have some issues which I will be discussing, I am sure, during the course of this hearing regarding the Bonneville forecasts and what that led to. I think it is true, also, that when setting up various enactments, Congress looked at forecasts. The assumption was that we were going to have a shortage of natural gas.

Now that doesn't appear to be the current best thinking on the subject, and yet we have helped cause some dislocations now in that marketplace by saying big users who could help keep the per-unit cost of transmission systems down by acquiring gas, can't acquire it. That in the long run on the surface of it today is apparently not in the best interest. The flexibility that we would obtain by having a market-based system there for it could be much greater.

Senator Nickles. I certainly agree with you. Are you familiar with the Williams case that was announced yesterday by FERC by any chance on pipeline deregulation?

Mr. Hodel. I am not.

Senator Nickles. They issued about a 400-page statement on oil pipeline deregulation and the Department has testified on behalf, I introduced legislation to implement deregulation of oil pipelines, and the Department was very supportive of that as well as OMB, not quite as conjunctive with Justice so I would encourage the Department to work with the Department of Justice to try to get a unified administrative proposal or supportive position if possible on the deregulation of oil pipelines as soon as possible if you or your staff could come up with that.

I have one other, I guess, more parochial issue, for Oklahoma. We have a Bartlesville Energy Technology Center which is one of three and actually there are five energy centers throughout the State, three of which are scheduled to be phased or turned over to the private sector. Are you aware of negotiations that have been going on between those centers and those communities with DOE?

Mr. Hodel. Yes, I am, in general terms. There are three centers which are presently under consideration for transfer, two to universities and one, which would be the Bartlesville center, that would require, as I understand it, some legislation—and we are prepared to support that legislation.

Senator Nickles. We will be happy to work with you. I just wanted to make sure that we were somewhat on the same vehicle to work together to make sure that whatever changes would be made can still be beneficial to those States and also our country and our energy policy.

Mr. Hodel. Here again, Senator, what we are trying to be cognizant of is the need in such activities not to disrupt the activities that are going on at those energy technological centers, because if we are disruptive, the projects that are carried on fall by the wayside or are delayed or are lost. So we are trying to work cooperatively here to see to it that it happens in an appropriate way and with the least possible disruption. I think that is where we are at the moment.

Senator NICKLES. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Nickles.

Senator Ford.

Senator FORD. Thank you, Mr. Chairman. We are all getting a little parochial, but I say to my friend, I thought the Natural Gas Policy Act that took care of all the utilities in Oklahoma and other States where they were on natural gas, you were on 97 percent, I think, of your generating facilities.

Let me just comment on that a minute. We find ourselves in a situation with natural gas just as I have lived with coal for a long time, boom or bust. When we passed the act, we were trying to find new natural gas. We were trying to encourage your people to search out and find natural gas. Now we find an economic situation where we are at 68 percent production. As long as we are in that posture, we are going to have a glut.

I appreciate the chairman's position but now is the time that we don't quit. We ought to act now instead of reacting later when we get the shortage.

One thing that frightens me is that we are becoming overwhelmed now with pressure to put price levels back on and freeze everything. I think the contracts need to be looked at pretty hard as to the take-and-pay part of it, but I hope that we do not lose sight of the energy independence that this country needs.

I am hopeful that we won't be put into a position as we discussed in your courtesy call, Mr. Hodel, that we have to have energy independence but are being lulled and now is not the time to rest on our laurels. We need to move forward.

Mr. Hodel, during the past two budget cycles, the administration has demonstrated a very strong trend toward phasing out the Department's fossil energy program through massive budget reductions. Also, it is understood, I think, by all of us that the administration is planning further significant personnel reductions in the fossil energy staff despite a legislatively established floor that was imposed in the fiscal year 1982 supplemental appropriations bill.

I believe we had early 1982 testimony by the Department before this committee that regardless of how much money we gave them, they wouldn't have to spend it. I look at your one paragraph statement on the budget and it says that if the President signs the bill into law, you will faithfully comply and I am glad to hear that.

I want you to tell the folks in the Department that we would like them to do that, also. These reductions apparently ignore the contrary message from the Congress.

Right now, for example, the Department's fiscal year 1983 fossil budget request of $106.9 million is going through an appropriations process which I believe will come somewhere close to tripling that amount and yet the Department, in my judgment, seems to still be proceeding in many of the programs with fossil energy as if the $106.9 million is gospel.

If the Department is to maintain stability and get on with its job, why do these actions contrary to congressional direction continue?

Mr. **Hodel.** They should not, Senator, and I will pursue that matter directly. May I say on the broader question, I have not been briefed—not by design but primarily by accident because of the other things I have been pursuing—on the machinations of the development of the budgets, the first two budgets; but let me say that I have a real awareness of the difference between what has been proposed by the Department and the administration and what has been approved by Congress. It seems to me that with the disparities of the magnitude you have identified, it behooves us as a Department and as an administration to try to identify how we can get on a better basis with the committee so that we are proposing activities which are more in concert with the committee and, therefore, perhaps we can be arguing about or discussing the margin.

What has happened here is that we have lost the ability to analyze individual projects at the margin because we are dealing with gross numbers and I would like to resolve that, if we possibly can.

Senator **Ford.** Mr. Chairman, I believe we have discussed before our inability to secure the detailed recommendations of the Department to OMB. About the only thing we have been able to see is what OMB sends to us or whatever they send back to the Department. I would hope that we would be in the posture of finding out your recommendations to OMB.

You know, there is a little trap over at OMB and there are a lot of things being trapped and I am going to try to open that trap in the next few days if I can and I hope that I can get some support from this committee.

In view of the fact that many promising synthetic fuels projects have withdrawn and apparently they are all going off the board gradually, that even the ones that are before the Synfuels Corporation are being withdrawn due to financing problems caused by the present economic situation and presumably a temporary low price of oil and in view of our continuing and I think this committee agrees with this, a continuing long-term energy supply vulnerability, doesn't it make sense for the Federal Government now to assume a greater responsibility for developing synthetic fuels and other technologies to reduce our vulnerability?

Mr. **Hodel.** Senator, the understanding I have is that the Synthetic Fuels Corporation right now is looking at a number of proposals. It has invited proposals and these proposals range from oil shale through coal conversion, gasification, and liquefaction proposals. It is my understanding, in talking with the chairman of the Synthetic Fuels Corporation, that he feels very strongly that we need to try to pursue some of those. My personal view is that I need to know more about the details of it as to whether we are on the right track.

I have been advised that some of the technology—some of the cancellations may have occurred because of an awareness that the technological proposal was not in the end going to be a feasible one. I don't know this personally. I have been told this. Others, I understand, are working. They are very confident that the Union Oil proposal on oil shale will work. If that is true, with the price guaranties that we have there, we are going to be met with further requests for followon projects to prove out that technology.

Senator **Ford**. Mr. Chairman, it is my understanding that the corporation will not share in cost overruns, the work is highly technical, long term and, I guess, high risk, as it relates to synthetic fuels from coal to oil or natural gas. The price guaranties are not sufficient to attract the private sector, responsible basically to their stockholders, to come in and join in a consortium to take the risk of the overruns. Government is participating only to the extent that the Corporation will let the project have "this" or "that" amount as a loan guaranty or whatever it might be, but after that, you are on your own and you find the seven sisters and some of the smaller ones all withdrawing.

Mr. **Hodel**. I was not aware that the Government would not enter into cost overrun arrangements or was reluctant to do so. I can understand why we would be reluctant to do so, Senator, because that is an open end. If a technological problem is encountered and control of the process is not in the hands of the Federal Government which it is not, but it is in the hands of the private contractor, what concerns me is that we find ourselves potentially on the hook for large sums of money being invested in overruns.

Presumably when we look at the matter of price guaranties, we then are dealing in an area where the non-Federal sector can evaluate what it thinks will work. When we are dealing with the larger production size plants, it seems to me we ought to be dealing with the commercial quality technology. When we are dealing with bench tests, bench activities or models, then it is entirely possible we are dealing at the research end of the spectrum and there is much more need for Federal involvement.

I am not sure that I can adequately respond to your question at this time.

Senator **Ford**. My time is up, Mr. Chairman, and I apologize if I go over, but you have emphasized in your opening statement about the defense, adequate defense, of this country. I recall the House bill came over as a defense production act and now we find ourselves spending more and more money on defense. One of the major items out there on the campaign trail was the expenditure for defense, and how many billions of dollars are being spent for defense; $9 billion going, basically I think Senator Bumpers said, to the breeder reactor, yet we can't find it in the goodness of our heart to talk about 1 or 2 billion or something like that to put a full-fledged commercial synthetic plant on the board.

Somewhere along the way we are eating our seed corn, if I can use that old Kentucky term, The defense of this country is now before this Congress and we are pushing forward with the expenditure of huge amounts, and yet we find the supporting effort for our defense program going by the wayside.

Thank you, Mr. Chairman.

The **Chairman**. Thank you.

Senator Heinz.

Senator **Heinz**. Mr. Chairman, thank you. Mr. Hodel, you stated in your opening statement and Senator Bumpers asked you about this, that you favored a balanced energy policy. What is the fiscal 1984 energy budget with respect to energy programs going to look like? Where is most of the money going to go and for what purposes, in general, in terms of the major energy categories? Do you have that information?

Mr. HODEL. No, I do not because the budget is in the process of being developed.

Senator HEINZ. You have made some recommendations on it by now.

Mr. HODEL. As a practical matter, I have not, Senator. As it turns out, we were scheduled to go into budget review last week and in view of the scheduling of this session, I thought that it was not something I was even going to have a chance to focus on. So I do not know what the departmental view is at this stage, but I expect that I will promptly begin to be informed on that.

Senator HEINZ. Let me ask a naive question. If you are not advocating budget priorities for the Energy Department, who is?

Mr. HODEL. My predecessor did and has. I am working within the framework of the budget activities that he was carrying on. The Assistant Secretaries who are there still and who have program responsibility—and those Assistant Secretaries are clearly involved—have been asked to provide their comments to us. As you know, ultimately I will not know what our budget will look like as it comes forward until it comes forward. But I will be able to tell better what I am recommending once I have had a chance to review that budget.

I might just say that, in terms of my approach, it is my desire to take a good hard look at this apparent disparity between what we have been recommending as an administration and what the Congress has been saying we ought to be doing. It seems to me that it is not constructive over the long haul for us to be operating in that mode.

Senator HEINZ. You are familiar with the 1983 budget recommendations?

Mr. HODEL. Generally familiar, yes.

Senator HEINZ. Which among other things resulted in a recommendation of cutting solar energy programs from $500 million in 1981 to $72 million in 1983, conservation programs from $709 million in 1981 to $21 million in 1983, where in the R&D budget of $1.8 billion in fiscal 1983, $1.5 billion of it, 83 percent, went strictly for nuclear R&D, where for coal research and development versus $730 million proposed in 1981, we are down to $80 million proposed for 1983.

Let me ask you, is what I just described where conservation is being cut dramatically, solar is being cut dramatically, coal is being cut dramatically and nuclear is being increased dramatically, is that a balanced energy program?

Mr. HODEL. As the question is asked, it is almost impossible for me to answer yes. My impulse is to——

Senator HEINZ. I am simply going by the proposals of the administration.

Mr. HODEL. Without going through the considerations that were utilized by the people who made those proposals, both within the Department and ultimately within the administration, I would be very hard pressed to say on the face of it that what you say certainly does not sound like it would be.

Senator HEINZ. Does not sound like it would be?

Mr. HODEL. Does not sound like it would be.

Senator HEINZ. Be a balanced energy program. I think we are going to be rather interested in your views as to whether the new budget which I suspect is going to reflect the same kind of priorities I just described, whether you are going to consider that a balanced program. I certainly don't. I think it is putting all of our eggs in one basket. I think it is being very shortsighted.

It is going to be very important, I think, not just to me but to many members of this committee and to the Congress. We have a prior understanding from you, prior to your confirmation, what you really do believe is a balanced energy program. It is all very well for you to say that well, as I describe it, it is hard to say but it really doesn't sound like a balanced program. It is another thing to say that you are going to work for one and define what that means. I haven't heard you say that yet.

I have heard you say that you want a balanced program. I haven't heard you define what that means.

Mr. HODEL. Shall I take a stab at it?

Senator HEINZ. That is the purpose.

Mr. HODEL. All right. In looking at what I will call the research and development portion of the budget, one of the elements that I consider is what kind of stability we are providing. You described some very sharp ramping down of activities. I haven't looked at the consequences of that, but I can imagine what they must be in certain quarters.

I don't know at this stage whether the $1.8 billion figure or the $1.5 billion figure that I believe you quoted which I am not personally familiar with, but let's assume that is correct, I don't know whether that figure on nuclear is driven by contract commitments that already existed or not. I don't know, therefore, whether what we are talking about is a situation where, out of a couple of billion dollars or $3 billion investment in research and development, we are required as a part of our share of taking a part of the cut in assistance, to focus our attention on some areas where we still have the ability to take cuts or not. That could affect the decision.

In terms of what I think a balanced approach is, it would seem to me we need to evaluate those technologies that are in the fossil area and where we think we can get the best return in the research area for our dollars and take a look at those labs that are involved and the projects that are involved and see if we can't see to it that we move in a direction that moves us toward technologies that will be useful in a commercial sense down the road.

In a time of budget restraint, it is apparent we are not going to be investing in every good idea that comes along. I am sure that is not what the committee or anyone else intends. I think we have to apply the same question to the investment in the research in the nuclear area. Are we not dealing fairly across the board? I cannot tell you today.

I hear this. I know the concern. I am aware of it. I will assure you that I will do my best to pursue it, and when I have finished, I will be prepared to defend the judgment that I have made, whatever that may be.

Senator HEINZ. I think you are going to find that your problem is you have all of your eggs not just in a basket marked "nuclear," but it is a basket marked "breeder reactor" and I think that is what you are going to find when you look behind those numbers.

The question that you are going to have to confront and I urge you to confront it much sooner rather than later is whether this Nation's R&D energy policy should be premised solely in putting all our eggs, virtually all of them, in one basket marked "breeder reactor." That is the issue.

Let me just for the record indicate that in terms of solar energy which was mentioned by one of my colleagues a moment ago as to the extent to which the Japanese were investing in it and indeed they are. They have doubled their research in the last 2 years to about $116 million dollars and that is a deceptively low figure because they have a cost-sharing principle in Japan where industry puts up at least $1 for every $1 the Government puts in.

France, which we tend to think of as a less technologically developed country than Japan, is now spending instead of $152 million 2 years ago, $309 million. Our budget in contrast has gone down to $72 million dollars or rather it was recommended at $72 million dollars in fiscal 1983 and I would suspect that the recommendation for 1984 is going to be below that. Maybe there is something out there that they know that we don't know. That has been touched on before but I wanted to get those numbers on the record.

Thank you.

The **Chairman**. Thank you. I might just say, Mr. Secretary, you will be back here in about 7 weeks telling us what the budget is and defending it. I wish you luck with Mr. Stockman in the interim.

Mr. **Hodel**. Thank you, Mr. Chairman.

Senator **Heinz**. It may take even more than luck.

Senator **Ford**. If everything else fails, bourbon will help you. [Laughter.]

The **Chairman**. Now we are on the alcohol fuels question. [Laughter.]

Senator **Ford**. He may need it.

Senator **Heinz**. Don't knock it if you haven't tried it.

The **Chairman**. Senator Metzenbaum.

Senator **Metzenbaum**. Mr. Hodel, when you were in to see me the other day, I told you then that I doubted very much that this administration would live for history by reason of its budget deficits or by reason of his increased military spending or by reason of any number of other acts, but that I was concerned that it would live in infamy for its failure to support alternative energy proposals, tremendous cutbacks in those areas, as others have already said and its failure to do anything about conservation except to cut out the funding for it.

I still believe that because I believe that the real threat to this Nation is that at some point we could run out of energy certainly if something were to happen in the Middle East.

What concerns me, and I have listened to your testimony although I haven't heard all of it, is that and your conversation indicated a concern but I don't hear that note of resolve that you will take the leadership in seeing to it that solar energy, shale oil, coal gasification, coal liquefaction, geothermal energy, and all of the others that are so important and became so much of the Nation's concern in the previous administration that almost in one fell swoop the door was not 100 percent closed but about 95 percent closed on all of them.

What can we look forward to from you as far as really some positive steps or are you committed to following your predecessor's position of knocking out or eliminating the funding for all of these programs?

Mr. Hodel. Senator, I appreciate your comments, both the other day in your office and here, with regard to this point. I share concern over not what our reputation will be but what the consequences will be of what we do in these areas because I believe strongly that they are important.

I would be misleading this committee if I tried to represent that I think that a single individual even, as a Cabinet officer, can set administration policy in significant areas.

But I can say that I feel very strongly about these areas. I think I have a record which demonstrates that, and I intend to be a forthright spokesman on behalf of these projects. But I can't guarantee that 7 weeks from now I will be here before this committee with a set of proposals which will satisfy the committee, or even any member of it, necessarily, as a result of the process by which we will have to go through in preparing and making the budget.

I do think that, regardless of that, if I have a strong enough commitment to it, as I believe I do, I think we can continue to engender private sector initiatives that are useful.

Having served on the Electric Power Research Institute board, I am well aware of the potential that exists among electric utilities in certain areas. I think a significant amount of activity is undertaken there. As I am sure you are well aware, Senator, one of the great advantages of a mixed system, such as Senator Heinz was referring to, where there is a dollar of private and a dollar of Federal investment, is that there is a much higher technology transfer capability than occurs if it is a purely Federal investment. If we invest all our money, only our money, and then have to invest in the mechanism for transferring that knowledge, it takes much more time and is much more costly.

Where I have seen success in these areas, it has been because there has been active utility participation.

I think we should focus our attention not wholly upon the dollars, but also where those dollars are being spent, and how they are being spent, and whether we are engendering out of the non-Federal sector significant responses in this country. The figures I have been given indicate that we are spending, in the United States as a whole, $80 billion on research. All of the rest of the world put together is spending $70 billion in research. The minute we start talking about that, of course, we get into how much of that is defense, how much is nuclear, how much is the breeder, and so forth, so we can break that down.

But the fact is this country has an enormous commitment to research, and I think there are opportunities there. This administration, I am convinced, is taking a good, hard look at what it can do with R&D to provide some of that stability that is really essential. So I am committed to trying to do that. I would be misleading you, sir, if I tried to promise that I could necessarily prevail in those arguments.

Senator **Metzenbaum**. The President had indicated that in cutting back these programs he could look to the private sector to pick up the slack. We now know that Exxon has closed down its operation and Ashland has closed down its operation. We know that the plant contemplated in Noble County, Ohio, was closed down.

We know that place after place after place the private sector has thrown up its hands for a number of reasons, but national interest can still only be served if we develop the alternative energy resources.

You talked about research. The facts are that research alone will not become operable.

I remember when they were talking about the program in Ohio for coal gasification in the Carter administration and it took, I think, 4 years to just play around with the concept and then nothing much really ever happened. I don't know that we can go much further with you than to say that I think it is a tremendous burden you bear on your shoulders because I think it is far more important than many of the other issues that we talk about on a day-by-day basis and have a much higher profile.

Let me ask you in the same connection, when you were at Bonneville, you had a study conducted to show that for every dollar spent on weatherization, there was a $6 savings in conservation. In my office, you said that was a pretty good return and I would agree.

We also know that weatherization provides jobs and lessens the needs for low-income energy assistance. But the President's budget calls for cutting back on that program. You have said that you intend to use your best efforts to support enactment of budget proposals that implement the goals of the President. How do you reconcile your knowledge that further funding with respect to weatherization and other conservation measures is in the Nation's best interest with the fact that you are committed to cutting the budget back in these very areas or at least to support the President's budget proposals?

Mr. **Hodel**. Let me deal with that question in two levels, Senator. First of all, with regard to the study which was done while I was at Bonneville, that study indicated that, in the case of an uninsulated home in our region, we could anticipate the savings you have indicated, that a dollar invested in insulation would be $6 worth of conventional generation investment.

That led me to propose, and suggest, and try to find a way to proceed with that kind of investment, because it seemed to me that that was how we could get to the point where energy conservation could be deemed a resource. If we knew that the dollar invested would save *x* kilowatt hours, then we could put it in our forecasts as a resource.

I was not successful while I was there in getting the authorities necessary to do that, but at least I pursued it. The approach was to work through utilities, work through the public power systems, the cooperatives, the municipalities to which Bonneville sold its power. It was essential in my estimation that it be done in that fashion because it had to be a part of the activities and planning of the local utility.

So I am not personally familiar with the details of the weatherization program that we are discussing here. I know that it has been proposed to be cut from the budget. I know that in the markup it has been included back in the budget, in the House at least. So I am going to have to become more familiar with it.

But as a matter of principle on one other level, I would prefer to see those kinds of funding activities carried on through Health and Human Services or the Housing and Urban Development Department rather than in the Department of Energy. I think that we are and ought to be moving in the direction of the Department of Energy having the high-level technical and professional competence we need in the area of energy.

I am concerned when we begin to mix that in too much detail with the day-to-day management of a specific program involving evaluations of social issues which frankly don't flow from a national labs type atmosphere. I think we would be well advised to approach it in that fashion without dealing with the level of the dollars in my answer to you here.

Senator **Metzenbaum**. Thank you, Mr. Hodel. You list five critical missions of the Department of Energy on page 12 of your testimony, but nowhere in your testimony do you address yourself to the Department of Energy's oil pricing overcharge responsibilities. Secretary Edwards constantly assured the Congress there would be no amnesty for the oil companies. We know that in spite of that in the *Sohio* case the Government claimed $300 million and settled it for a paltry less than $20 million. At present there are more than five billion in identified potential overcharges that remain unresolved. In addition, a GAO study recently indicated there are still hundreds of millions of dollars in food reseller schemes that have not been prosecuted. What kind of leadership and what kind of emphasis can we expect from you in attempting to regain these dollars that really rightfully belong to the public of this country in one way or another?

Mr. **Hodel**. Senator, I can assure you that I will proceed in that area as aggressively as I know how. That immediately impiies some qualification. We are dealing with claims that apparently are getting difficult to prove. I was at one time active in an antitrust case on the plaintiff's side, and I remember how the client was excited at the tremendous dollar volumes that we were projecting. By the time we were through sifting through all of the evidence that we could use in court, the settlement appeared to be at a very paltry level.

I am, at this stage, in the position of relying upon advice from professionals, that they have pursued and are pursuing and will pursue as vigorously as possible. I will look into that in greater detail because we have two levels of concern here again. One is, what level of recovery we have and two, what level of credibility and perception we have that we have done the job that is called for here.

I share your concern and I share Secretary Edwards' concern that we not be viewed as having turned our back on our responsibilities in that regard. I think it is imperative as the employees of the American people, that we set a good mark there. It may be very difficult where we have settlement figures such as you have described, If they are properly based, soundly based from a legal standpoint that that is the best settlement we can have, it is going to be very difficult to explain to many people how you could have come down $280 million in making this settlement. But I would hope at least that we can communicate with the concerned members of this committee what our thinking is and what our rationale is, so you have at least our best reasoning for what we have done.

Senator **Metzenbaum**. One last question. Your position and recommendation to the President with respect to immediate decontrol of natural gas prices, is to permit the law to run out at the end of 1985, reenactment of some portion of the law in 1985 or any present legislation affecting the control of natural gas prices?

Mr. **Hodel**. I did not discuss with the President a specific recommendation. Let me say that first of all, as I indicated in my opening statement, I think it is imperative that we pursue the issue. It appears that we are not prepared, if we have any alternative, to wait for the existing law to run its course. I would like to think that we will be able to come up with a proposal, and I would personally think that I would not be recommending an immediate decontrol proposal, but I would think that we would be working toward some kind of accelerated phased decontrol if that is feasible to work out and if it has any prospects with the Congress.

Senator **Metzenbaum**. Thank you, Mr. Chairman.

The Chairman. Senator Domenici.

Senator **Domenici**. I believe I arrived after the others and I would be happy to defer.

The Chairman. All right. Senator Johnston.

Senator **Johnston**. I thank you, Senator Domenici. Mr. Hodel, not to mince any words, but the Department of Energy has been characterized during this administration as rife with confusion, hesitation and misdirection. I say that by looking at the record.

First of all, look at natural gas. We were told that the President was for some legislation to address the natural gas question. That legislation was never presented to us. We are still, according to your statement, "reexamining." Nuclear waste—I read in your statement that you are supporting the efforts to get nuclear waste legislation. But the fact of the matter is that the House and the Senate are going in opposite directions toward an unresolvable impasse and there has been no leadership from the Department of Energy.

On coal—we have no initiative and no leadership from this administration on deep water ports, as my colleague from Virginia has pointed out. The President in the last campaign endorsed dredging our deep water ports particularly the Port of New Orleans, but we have seen no move in that direction.

On the coal slurry pipeline issue the administration is sort of off again-on again, mostly off again; and that is a most important issue that relates to coal.

On the windfall profits tax, we were told by the President that he was dead set against it. And he strongly criticized Mr. Carter for being for it. But in spite of pleas from my colleague, Russell

Long, and others, he appealed the recent decision which struck down the tax, thus implicitly endorsing the windfall profits tax.

On the strategic petroleum reserve, we don't have a drawdown plan yet on that even though that is certainly one of the most important items on the Department of Energy agenda. We don't have an emergency plan in case we should have a blockage of the Strait of Hormuz. We have been assured that there is some secret plan somewhere, but it has never emerged.

You might as well add synfuels to the list as well.

When I say it is characterized by confusion, hesitation, and misdirection, I think that is absolutely true.

The only thing we have had from the Department of Energy is sort of a half-hearted statement that we ought to abolish the Department and if the action of the Department is to be used as evidence, I guess there is pretty good justification.

I think we badly need leadership, expertise, and some help from the Department of Energy. I am persuaded that you have the background and the education, and, if I might say, I think you conducted yourself very well before this committee on the verbal side. But we need some leadership. I am not trying to just engage in polemics here. I am trying to make a real case. We don't have any leadership.

I hope that when you get in there that you will submit some natural gas legislation. One way or the other, we need to resolve some very difficult problems. What do you do about the take-or-pay provisions, about the "high ball" contracts, about all those things. We need some help in that. By the way, are you still against the windfalls profits tax that President Reagan said he would veto when he wrote Representative English? Is that still the view of the administration?

Mr. HODEL. We do not favor a windfall profits tax, Senator, as you know.

Senator JOHNSTON. All right. That's good. Now on nuclear waste, this committee has legislated in two Congresses on nuclear waste. In the last Congress we legislated what we call monitored, retrievable storage. That was the clear choice of this committee and of the Senate and it was passed overwhelmingly.

We were told in this Congress that there was another side—that we need to go with geologic storage. So with a view toward compromise of the various interests and constituencies, and in getting the environmentalists on board, we, in this committee, went with a parallel track. We thought we had a compromise. There was a very tight working relationship between us and the Committee on Environment and Public Works. But lo and behold, we passed that measure out of the Senate with a great attitude of compromise and it gets over to the House and they treat it like a brandnew bill. It became the starting point for further compromise which means that we are not going to have any nuclear waste bill this year. It is unfortunate.

Part of the reason for that is we really haven't had much leadership out of the Department of Energy. The Department of Energy, it seems, comes in with each new administration and has to reinvent the wheel, and they have to restudy all these things. By that time 2 or 3 years have passed and they finally figure out that they are not going to be able to use geologic storage, at least not right away.

It is the same knowledge that other countries have had. The French have an operating monitored retrievable facility; the British are developing one; the Fins have one and the Germans would like to have one. So virtually every country in the nuclear business has gone with M.R.S.

For various technical reasons, you can't put those hot fuel rods in a geologic medium, at least right now it is not the best way to do it.

Now I hope that you won't fool around for another 3 or 4 years and end up at the end of your term 2 or 6 years whatever it is, and not have that problem resolved. I won't say it is simple, but it is clear that we have a clearly solvable technological problem, combined with a vast political problem where we need leadership.

On coal, I hope you will get your courage up on that. I think it is very clear that we need coal slurry. We are not going to get it without legislation and I hope you will give us that leadership, Mr. Hodel. I think you have, as I say, the background and maybe you are a good enough bureaucratic infighter to get the idea logs in line on that. It is a big fight and I hope you can join it.

I could go down the list, which I did partially in my initial statement, but the Department of Energy needs to survive if for no other purpose than to resolve these issues, and it is a waste of time to continue to talk about dismantling the Department. You know, in the first place, politically it is not going to happen and to continue to talk about that simply demoralizes all of the employees over there and makes them think that their work is really not worth doing. Why stay up all night to come up with one of these plans—whether it be SPR, or an emergency plan, or to figure out how to deal with nuclear waste—why worry with that if the whole Department is going to be abolished anyway and your job is going to be RIF'd. I know what you are working under because it is an article of faith of this administration that you have to abolish the Department of Energy. I go out to the oil patch and I hear these guys say there is the Department of Energy with a $10 billion budget and 20,000 employees and how many barrels of oil have they produced this year? None. Proof positive that the Department ought to be abolished. I hope you can resist those entreaties and recognize that aside from the fact that you may be for the free market, as am I in most instances at least, that we need some leadership.

You have the ball now. You asked for the job and the brass ring is coming your way, and I hope you will grab it and give us some leadership rather than just polemics.

Mr. Hodel. Senator, I would like very much to comment on your statement if I may. Let me start with leadership. It would be very easy for me to inflict some severe self-inflicted wounds by attempting, without having laid proper foundation with the broad spectrum of people that I must deal with both within the administration and outside on some of these issues that you are talking about, to announce a particular position on some of them at this stage. I may have a slightly different point of view or even a greater different point of view from others, and might very well so build barriers to further communications from me that the hoped for leadership would not be available. Yet, I feel that a clear responsibility of the Secretary of Energy is to try to provide that rationalizing influence for the broad spectrum of energy activities in this country.

If there were one thing I would hope to see on my epitaph when I leave the Department, it is that I was a constructive force toward helping rationalize the energy policies of this country. In international conference after international conference, I have been struck by the way our foreign friends bemoan the fact that a nation on which they are so heavily dependent for what we do doesn't seem to them to have a rational or a consistent energy policy.

So I would hope to try to provide that leadership. With regard to the employees of the Department and the merger question, I have tried to take early steps there to provide some leadership. I have gone to the employees. I have spoken with them. I have made no bones about my commitment in principle as a member of this administration to the ideal of a merger.

I also recognize that that is not what I would call the most active legislative proposal before Congress at the present time. I tried to emphasize to those employees that I see that the bulk of the activities of this Department that are now carried on are going to continue to be carried on by the Federal Government. Even if we didn't want to, Congress has certainly made that clear. Therefore, I hope that those career professional employees of the Department—and the initial feedback, it is too early to tell what the long-term line will be, but certainly the initial feedback I am getting is that that message is being taken to heart—can spend less time and concern about their own personal career futures and focus more of their very capable attention on the prospects and the projects in the Department.

Senator **JOHNSTON**. By the way, if I may just generalize a moment, I think what we have done and I think all of us share the blame for this, to our career civil servants in this country is absolutely abominable. Other countries don't do that but we have. We call them all kind of epithets, bureaucrats and worse. We don't give them any protection. Such protections that are built into the law, we try to get around. We never show appreciation and in the process, I think, what we have done to the career civil servant is greatly to undermine its effectiveness and its quality.

Mr. **HODEL**. Senator, if I could comment on that, I think my record at Bonneville and my record at the Department the of Interior is different from what I would think is a fair characterization of the general treatment of the career employee. But I think it is important in doing that to keep several distinctions in mind. I think that one of the reasons we have mistreated the career professional employee in this country is that political appointees come into an administration and assume that, because the career employee has been there before, the employee must be tainted with the prior administration's point of view.

My personal experience has been to the contrary. If given clear policy guidance and leadership, the career employee is all too happy to try to make the new politically appointed leadership successful because in so doing, they are successful. These programs they believe in, the projects they believe in, are successful.

But I think we have not done a good job in this country of distinguishing the role that should be played by the career professional and the policy person. I think one of the reasons you have seen successes, or what appear to be successes in other countries, is that they have been much more effective at drawing that line and not permitting either the politically appointed people or the congressional people or their staffs to convert career professionals into political operatives.

If we are successful in keeping that line more clearly drawn, I think we will be more successful in achieving an improved career professional performance.

Senator JOHNSTON. I would like to ask you more questions but a bureaucrat just handed me a note saying time. [Laughter.]

The CHAIRMAN. Thank you, Senator Johnston.

Senator Melcher.

Senator MELCHER. Thank you, Mr. Chairman. Mr. Hodel, you can answer this question yes or no. In your view do you oppose exporting Alaskan oil from Prudhoe Bay to Japan?

Mr. HODEL. Senator, am I constrained to answer that question yes or no?

Senator MELCHER. Yes. [Laughter.]

Mr. HODEL. Now I can't remember the question—do I favor or do I oppose.

Senator MELCHER. In your view.

Mr. HODEL. In my view, we should at least look at what it would provide if we were to export. I think that we ought to at least explore what that option means to the country and not foreclose it on a straight philosophical basis or a political concern that we ought to keep that resource domestic if in the economic best interest of the country we should export.

Senator MELCHER. I might just observe that there are all kinds of scenarios that one can build to show an advantage in regard to trade and you mentioned trade quite a bit in your testimony. Nevertheless, it seems to me that it still conflicts with the idea of energy independence for this country.

Mr. HODEL. Might I say, Senator, in that regard, one of the reasons I hesitated so long in trying to answer the question is that I might be saying too much or too little when I answered the question the way I did, because it depends a lot on what scenario we utilize and whether you assume that if we did so exchange oil, we would not have the opportunity, no clauses in the contract, which would permit us to pull it back in the event we had a security problem or the like.

So it seems to me that there are specific concerns but they could be dealt with.

Senator MELCHER. Commenting further, any scenario that is contrived to show the advantage in allowing for swaps can still be contrived when the emergency arises for canceling the swap. That is why I asked for yes or no because it is yes or no. You can always dream up advantages that appear to be advantages and yet you still get to the disadvantage of how you withdraw it when there is an emergency and the rationalization that the emergency isn't that great.

Turning to a second point and I believe this is all I have, we have discussed rather rigorously in your testimony and in the questioning of the committee the mix of energy resources that goes into development of the electrical generation industry. I share with Senator Ford and Senator Heinz and others on this committee that great concern over the disparity between the R&D money that goes into coal research as compared to nuclear.

I had discussed with you a couple of days ago your background in MHD, which indeed is a fine background, of an advocate for MHD, in your work with Bonneville. But we have never yet gotten to the point whether it be with the Department of Energy or its predecessor regarding energy R&D, what the opportunities for the use of coal in industrial purposes and plants using MHD technology.

It hardly warrants much discussion to talk about the private sector coming up with the necessary funds for R&D. The private sector has probably contributed as much in R&D for MHD as has Government so far. Looking at utility companies, I suppose while they are making profits, they are constrained by their applicable law in each State on how much they could siphon off from funds available for R&D work.

I believe that is true, is it not? It is true in Bonneville's case, I am sure?

Mr. HODEL. It is generally true that the rate regulators at the State level put some limit on how much money can be put into R&D.

Senator MELCHER. So even though that is a profitable side for energy developers and energy purveyors in this country, they are constrained. Now, from the business standpoint, a few years ago one of the aluminum companies was marching forward rather dramatically with developing MHD technology. It happened to be an aluminum company, but looking at the price that they can get for their product, I know they have no way of investing any money. In our current economic setting that would be true of a lot of potential industrial users of MHD technology.

So it seems to me that Government must take the lead, not only the lead, but must take the big chunk of the R&D money. I would like to ask you at your level, as Secretary, to prepare a working paper on the potential uses of MHD for industrial uses; that is, not for use as generation of commercial electricity.

I think it would be most timely at this point because I am told that the MHD group will be meeting today and tomorrow to begin the drafting of the program for bringing it to commercial use within the next decade.

I think their preliminary figure is something like $300 million to be spread out over probably half a dozen years or maybe even 8 years. I think the point that is being missed in this is what is the industrial potential of utilizing coal with the MHD technology. I would very much appreciate your getting that done.

Mr. HODEL. I would be happy to do it.

[The information follows:]

MHD power systems developed historically have been aimed at application in the base load utility industry. However, as you suggest, it may be possible that there are economic applications for MHD technology in the industrial sector. I have asked that a working paper be prepared to identify any such applications.

The CHAIRMAN. Thank you very much.

Senator Matsunaga.

Senator MATSUNAGA. Thank you, Mr. Chairman, and thank you, Senator Domenici, for yielding.

Mr. Hodel, when your predecessor, Secretary Edwards, first appeared before this committee, during his confirmation hearing, he openly acknowledged in response to a question put to him by Senator Jackson, that his principal mission as Secretary of the Department of Energy would be to dismantle it. Do you have such a mission? Are you charged with such a mission?

Mr. HODEL. Senator, it is not my principal mission and I do not believe I have been charged with it as a principal mission. I have tried to describe the policy approach that I have on that subject but I have also tried very hard in my dealings with the employees to make sure that we don't misrepresent how that would affect people.

Senator MATSUNAGA. I like your presentation and your apparent openness in responding to questions—but you are an enigma in a way.

You speak for example of the importance of energy to our national economy and our national defense and security, and yet you support the subjugation of the Department of Energy to a Sub-Cabinet level position, by advocating a merger of the Department with the Commerce Department.

I am sure you have sensed that, among the members of this committee at least, there is a desire for leadership, and a feeling that our energy program has failed because of a lack of leadership from the administration. You come before us, however, asking that we give you a position of less leadership by making the Energy Secretary subordinate to the Commerce Secretary. The Secretary of Commerce is involved in many other matters, under the administration's reorganization proposal, energy would again become a secondary matter for the Commerce Secretary and the administration.

In private conversation I indicated to you my concern over the lack of effort on the part of this administration to diversify and to develop alternative sources of energy. I was happy to read your statement and listen to you discuss the need for a balanced system of energy. I think it is very important to have a balanced program. However, if you come before us and say that you are prepared to accept a position which would, in fact, offer you less leadership, how can we expect you, as Secretary of Energy, to promote an effective energy program?

Mr. HODEL. Senator, I hope that you can get leadership from me. I hope that my record when I was at Bonneville will permit you to expect me to provide that leadership.

I think I have tried to say as straightforwardly as I possibly can that so long as the Department of Energy exists, and we do not know of its imminent demise, that I will take responsibility fully and completely for the Secretary's job if I am confirmed by this committee. I have also tried to indicate that I think we have pressing on us issues which are substantive energy issues which we need to deal with that are of a higher priority than the question about merger. I have clearly recognized that there does not seem to be great sentiment for proceeding in that way.

That is why I answered my prior question to you the way I did. It is not my primary motivation. Yet I think when we do get to a point where we have the opportunity to talk about how we visualize the Department of Energy and energy issues being represented in this Government, that we can make a good argument that it will be enhanced by a merger with the online department which has significant commercial and business and industrial responsibilities both domestically and foreign and it would still be at that level, a Cabinet level spokesman for the responsibility.

As I say, I think it may be academic at this stage.

Senator **MATSUNAGA**. I take it from your prepared statement that if the President should indicate that Ocean Thermal Energy Conversion, for example, should be zeroed out, then you might not seek to dissuade the President. Is this the case, or will you take the position that as Secretary of Energy, if you find that OTEC is a resource worth pursuing, you will endeavor to change the mind of the President?

Mr. **HODEL**. Senator, I will not hesitate to try to change the minds of those with whom I work, whether it is the President or other advisers of the President or members of the OMB or members of my own staff on these kinds of issues. If, after I have done that to the best of my ability, I am not successful—and I must say while I think I have had some successes in such persuasive activities in the past, I have also had failures in persuasive activities of that type in the past—I will not desert my obligation to the President to carry forth his budget. I will expect to carry it to the best of my ability; and if it is not satisfactory to the committee, of course, I will expect to be appropriately treated by the committee.

Senator **MATSUNAGA**. You also made the statement that if the Congress should differ with the President and override his intentions that you will support the position of the Congress.

Mr. **HODEL**. What I believe I said was, if the Congress adopts an appropriation bill and the President signs that bill, my understanding is that becomes the law and I will attempt to carry that out to the best of my ability.

Senator **MATSUNAGA**. Good. I am glad to hear that.

My next question is what is your position on OTEC?

Mr. **HODEL**. If we have money in the budget, Senator, I intend to see to it that it is appropriately expended. I am very familiar with your interest in OTEC. When I was talking about energy matters at Bonneville Power Administration, I followed such a project off the coast of Africa with great interest, and I knew at that time there was some discussion about the possibility of using the gulf stream as a potential source of ocean thermal gradients as I called it at that time.

I am very interested in what has transpired at OTEC. As you know we do have some money for the follow-on study at the present time. The question is going to be—and I could not honestly tell you that I have a clear position on it—how much more Federal investment is available from a priority standpoint; but I understand very clearly your interest and concern, and I think I will try to take that into account in evaluating.

Senator **MATSUNAGA**. Do you feel that it is a technology which will be productive in the immediate future?

Mr. **Hodel**. It is my understanding that that is how it appears at the present time.

Senator **Matsunaga**. Good. I am glad to hear that. I think, as in other areas such as solar energy, that unless we proceed aggressively to complete projects such as the 40-megawatt pilot plant at Kahe on the island of Oahu, we are going to find that perhaps other countries will be selling us the technology before not too long.

Mr. **Hodel**. This is a pervasive problem across the spectrum of our research activities. I do not know how many times it has come up. It is an argument used with regard to the breeder program. It is an argument that is used with regard to solar, with regard to ocean thermal. It is a valid argument.

I think if we are concerned about jobs and the economic future of the United States and we recognize that we have maintained a technological lead in area after area, a matter of concern to us ought to be how we maintain that lead. I think it is distinctly to our advantage to do that. I am aware of that, Senator. At this stage I simply could not commit to the level of budget support that would be available for follow-on projects at OTEC.

Senator **Matsunaga**. I do hope you are at least favorably inclined to support OTEC.

Mr. **Hodel**. I think it is fair to say I am favorably inclined; yes.

Senator **Matsunaga**. You have been sitting there now answering questions for practically 2½ hours. May I submit questions in writing so that you may respond in writing for the record?

Mr. **Hodel**. Yes. I would be happy to respond to those.

Senator **Matsunaga**. Are we going to have that opportunity, Mr. Chairman?

The **Chairman**. Yes, sir. I would hope that they are not too lengthy so he can respond in a short period of time. I hope, Mr. Secretary, that you can get those answers back to us because, as you know, we have a very limited period of time in which to act.

Senator **Matsunaga**. Mr. Chairman, a brief question relative to the SPR. Secretary Edwards and Transportation Secretary, Drew Lewis, on October 29 of this year signed an agreement concerning cargo preference compliance for the SPR. Under the agreement, the Department of Energy agreed to make up the existing compliance deficiency and to seek the Attorney General's ruling on the size of the deficiency. This is an important step as you will agree in maintaining a U.S.-flag merchant marine.

As Secretary, would you insure that DOE complies with the agreement and the Attorney General's ruling?

Mr. **Hodel**. Yes, Senator. I am not familiar with the specifics. If we have an agreement, I would expect to work diligently to follow through with it as required or interpreted by the Attorney General. As you know the President is committed to attempting to assist and maintain a domestic merchant marine.

Senator **Matsunaga**. One last question Mr. Hodel. As you noted in your prepared statement, energy is so important to daily living. We in Hawaii were once again made aware of the extreme importance of energy in the wake of the recent hurricane, Hurricane Iwa. Without electricity, we have had no ground transportation because while the gasoline is in the ground there is no electricity to pump the gas out. The telephone lines have been down, leaving us with no communication with those on the Island of Kauai, my home island. I have tried to get hold of the mayor, but I cannot get through to the mayor because the power is out. The food spoils because the refrigerators are not functioning.

Is there any program under the jurisdiction of DOE which could be employed for the relief of the people in Hawaii? There are thousands of people still without electricity. Is there any such program that perhaps could be stretched into helping these people? You may be aware that over 7,000 people have been driven out of their homes.

Mr. HODEL. Senator, I am not aware of any but I surely will follow up and find out. Of course, this may be partly the problem of the distance from the mainland, but I know that in domestic emergencies of electrical systems that adjacent electric systems, public or private, it makes no difference, come to the rescue with special crews and operators and assistance in any way including equipment. This is an especially difficult situation because of the distance.

I do not know of anything within the Department, but I will try to find out. I would not hesitate either. I will check with the National Electric Reliability Council and find out whether they have had any offers of assistance from member systems.

Senator MATSUNAGA. Thank you very much. I would deeply appreciate it.

Mr. HODEL. Thank you.

[The information follows:]

The Administration is committed to strengthening the Nation's preparedness to meet emergencies. As I mentioned in my testimony, the recent situation in Hawaii is unique because sister utilities could not respond to the interruption of electricity generation and transmission as they might in the contiguous United States.

Following your inquiry at the confirmation hearing, I inquired and was informed that the Department currently has no program in place which can respond to an emergency such as the one which has occurred in Hawaii. However, this does not mean we should not seek innovative ways to be of assistance should Hawaii again be placed in a similar emergency situation.

One way of doing this may be in bringing the Emergency Electric Power Executive Reserve (EEPER) to a state of readiness. The EEPER has statutory authority under the Defense Production Act of 1950; however, its organization and staffing are not complete. By way of background, the EEPER, when in a state of readiness, is composed of a few federal employees and a much larger number of voluntary executives from the electric utility industry who serve without compensation. The purpose of the EEPER is to provide a group of experts who collectively can deal with electricity outages and disruptions of varying sizes and duration. It is my belief that the collective experience and the cooperative efforts of such a group can recommend solutions which will enable our citizens to weather more easily electric energy emergencies.

I have asked the Office of Emergency Preparedness to coordinate with the North American Electric Reliability Council to look at this and other possible solutions because I believe the operations of electric power systems during emergencies are essential to our citizens and industry and are of mutual concern to federal, state, and local governments.

The CHAIRMAN. Senator Domenici.

Senator DOMENICI. Thank you, Mr. Chairman.

I was noting, Mr. Chairman, that perhaps Senator Matsunaga sat over here on our side because so many people voted against him that he wanted to come over here and have a little purgatory. I understand 18 percent voted against you.

Mr. Secretary, it seems to me with few exceptions your staff could have easily prepared you for today. As I sat waiting for each Senator, I wrote down what they would eventually get around to talking about. I knew Senator Melcher would have MHD. I knew my good friend from Hawaii would have OTEC and certainly I would be letting everybody down if I did not talk about Los Alamos and Sandia.

Let me ask you a couple of general questions about the Department first. I want to first tell you that obviously I respect the way you have stated your position with reference to following through on behalf of the President, with reference to policies that he ultimately decides that are going to be the policy of your Department and in many respects you have talked about those today.

I think whether or not we vote for you, I do not think we necessarily ought to base our vote on that because obviously you must support the President.

I think in terms of dismantling the Department and any effort to do that indirectly, I think it would be very critical and perhaps even proper for some of us not to vote for you if your attitude was that you were going to pursue in any way the dismantling of the Department without Congress having first passed the enabling legislation to modify and change it.

I can tell you from my standpoint while I totally respect your position to do what the President asks you to do, in this respect the law of the land is that we have a department and when you get confirmed you are supposed to run it. It has certain functions and you are supposed to do them. I would just ask you in that respect, can this committee assume that even if the President maintains as a policy position his desire to merge or dismantle or modify dramatically, that you will not seek to do that unless and until Congress grants you the appropriate permission?

Mr. **Hodel**. Absolutely, Senator. That is a clear understanding within the administration as far as I can tell. I have not had anybody suggest to me that we should consider administrative actions to effect the reorganization proposals. I have further been advised by the staff of the Department that they have, long before my arrival, consistently represented to the members of Congress and their staffs that we would not do that. I have no problem with that representation, and I thoroughly and totally endorse it.

In fact, I would like to emphasize that point because I would like to put to rest the concerns that I know were generated because of some recent conversations that apparently took place which were communicated in a context of a possible administrative effort to deal with the national labs. I would like to place that to rest. I do not believe that is happening and I will not support it and I am comfortable with that.

Senator **Domenici**. You understand, I gather from my conversations with you on your visitation to my office, that in these large institutions with thousands of workers and scientists, highly professional and highly trained, that some kind of consistency and continuity and knowing where they are and where they are going is absolutely vital to their well-being. The constant notion that they do not know where they are at or where they are going to be with reference to management is devastating. That is aside and apart from constant quick fluctuations in funding which obviously is devastating to long-term research. You cannot do that on a 6-month basis or a 90-day continuing resolution. That latter is not your problem so much as the former is.

Let me ask. Are you familiar with the ERAB report, those who went out and evaluated our labs to pass judgment on not only the ones in my State but all of them as to their flexibility and what they ought to be doing?

Mr. **Hodel**. I am aware such a study took place and of some aspects of it. Is there a particular area?

Senator **Domenici**. Yes, there are two. The first one is that study recommended that DOE management should use the experts at the labs to help formulate policy and that they should be given somewhat greater flexibility to work with industry and for industry and the departments other than DOE, thus maximizing their expertise. That is a recommendation. That advisory group is yours. It is formulated to give you help.

I guess I would just ask, Do you intend to follow through on their policies?

Mr. **Hodel**. I am very comfortable with the recommendation that relates to utilization of the experts at the labs in helping formulate the policy. By "policy" I am assuming we are talking about the scope of projects and the direction of projects and the duration.

Senator **Domenici**. Yes, sir.

Mr. **Hodel**. I am very comfortable with that portion of it.

When we talk about expanding the role of the labs, my instinctive reaction is that is a good idea. We ought to benefit from that as much as possible. I would simply assume that the committee and I know you, Senator, have great interest in those activities. We ought not to be casual in the way we add responsibilities to those labs so we are careful not to diffuse them, that we do not mix their objectives in such a way. I would not want to do something like that if it appeared that I was attempting to do some of the very things that were talked about in recent weeks as a possibly different role for the labs.

In other words, I like the idea instinctively. I think we need to be careful in carrying it out or in moving in that direction so that we do not obscure the purposes and the top quality professional abilities of those labs.

In that $80 billion research budget of the United States, I am advised that we have the best basic research in those labs going on anywhere in the world. We do not want to damage that capability.

Senator **Domenici**. Let me follow up. I think that is absolutely correct. As a result there is a very large resource of knowledge and equipment there obviously.

Would you comment on the notion that maybe these resources should be made available without infringing on the primary role of the labs, made available to universities, researchers and students so as to keep the enthusiasm alive?

Mr. **Hodel**. If I understand the briefings that I have had from the Assistant Secretary, Mr. Trivelpiece, in this area, he is moving in that direction. He sees the need for the interaction of a broader based university community.

One of the critical problems in the scientific community is that we need to be careful that we do not pull the best teachers into our labs where we need their output, but where they no longer train their successors. I am told this is a problem currently.

Senator Domenici. It is very serious.

Mr. Hodel. If we can find some way of making possible the necessary interchange, that would be not only in the labs' best interest and the private sector's best interest, but obviously the country's. I would be very enthusiastic for efforts in that direction.

Senator Domenici. I wonder then in that regard if you would take a look at the existing DOE postdoctoral program which is right along the lines you are speaking of there and if you might quickly respond in writing as to whether you support it and whether you and your advisers think it is doing a good job, is there more need for it than the present program permits and let the committee have your response.

Mr. Hodel. I will do so.

[The information follows:]

At your suggestion I briefly have examined the DOE postdoctoral program. I am very impressed by it and support it. It definitely appears to be doing a good job, and there may be additional areas of need which I would like to support, subject to competing budget priorities.

Senator Domenici. Thank you very much. Thank you, Mr. Chairman.

The Chairman. Thank you very much, Senator.

Senator Bradley.

Senator Bradley. Thank you, Mr. Chairman.

The Chairman. I wonder if you would yield for just a moment because I think the time has come when I need to outline what I hope we can do and find out if there are members either present or in their offices who would like to comment on it.

I would hope that when we have completed a round of questioning of Mr. Hodel we can take Ms. Hesse's statement, then recess for lunch, and then have the public witnesses, the balance of the witness list, after the luncheon recess.

Senator Bradley. That is fine with me.

The Chairman. Senator Bradley, if you will go ahead.

Senator Bradley. Mr. Hodel, there is a study required from the Department of Energy on market mechanisms that could be used to supplement financial assistance to States and individuals during oil supply disruptions.

Could you tell me how that study is progressing?

Mr. Hodel. Senator, if that is the study I have in mind, it is due December 31.

Senator Bradley. No, August 31.

Mr. Hodel. I was thinking about a different study. I was going to say that I would hope the study is well in hand and well on the way because of the tight deadline.

Senator Bradley. You know you get extensions under extenuating circumstances.

Mr. Hodel. In this case, I have asked the question upon arrival about how these various studies will be made, whether they will be on schedule. I am assured they will be, but my present belief is we are so far in advance of the one you mentioned, that is possibly a gleam in somebody's eye. I am certainly going to see to it that we are on schedule.

Senator **Bradley**. Let's say a disruption occurred tomorrow. Would you allow the markets to allocate the oil?

Mr. **Hodel**. Allocate the oil out of SPR?

Senator **Bradley**. No.

Mr. **Hodel**. General?

Senator **Bradley**. Generally, would you allow the markets to allocate the oil?

Mr. **Hodel**. That would be our present response, yes.

Senator **Bradley**. Would you seek to provide financial assistance to States and individuals to help them cope with the higher price of oil that would come in a disruption if you did allow markets to allocate the oil?

In other words, there is a disruption today, there are no Government allocations. There are no price controls put on the price of oil. Oil goes to $70 a barrel. It puts real hardships on many individuals and some States. The question is will you provide financial assistance to help those States and individuals cope with the higher price that flows from the decision to allow markets to allocate the oil?

Mr. **Hodel**. Senator, I am not familiar with what authorities I even have in that regard at this stage. My immediate reaction is that, in light of what I hope will be the Strategic Petroleum Reserve drawdown plan, which is I hope in hand or on its way, we will have an answer which will be that we will not have $70 a barrel oil.

Senator **Bradley**. I hope you are right.

Mr. **Hodel**. Under that plan we have the ability, I believe, to prevent that from happening so we do not get to the question you are asking. That drives me to what is my authority, and I do not have an answer for you on that question.

Senator **Bradley**. That is what is specifically required of the study. I hope that you will supply us with that information from your perspective.

Mr. **Hodel**. I will.

Senator **Bradley**. In addition there is another train coming down the road. You already see it in gas prices. People are calling for reimposition of controls because of high prices. That has a reason separate from the disruption.

You can imagine what the call would be if there was a disruption. You do not want high prices, but I am sure the previous administration did not want them and the administration before that did not want higher priced oil but they got it because there was a disruption.

The question is how do you cope with the financial impact of that disruption. That is why I would hope you would get the study and also give some thought to it.

We have been dealing with these interagency task forces for several years. Meanwhile we are unprotected.

On the SPR drawdown, you have indicated you would like to rely on auctions and exclusively on market prices for that drawdown as opposed to allocations. Is that correct?

Mr. HODEL. We would like to but we retain in the proposal an option to allocate if required.

Senator BRADLEY. Allocate how much?

Mr. HODEL. Up to 10 percent on a monthly basis of the amount that is being made available for auction.

Senator BRADLEY. Ninety percent of it would be auctioned and you would retain 10 percent of whatever you auctioned for direct allocation?

Mr. HODEL. If it was deemed necessary to do so, yes. Again, that would be affected by the decision as to how much oil should be made available. It might well be that if a million barrels were interdicted, a million barrels plus a small amount would enable us to be sure that fully replacing the interdicted supply would prevent the very kind of thing we are all concerned about.

Senator BRADLEY. For example, you have an auction and the auction price is $40 a barrel. Could you allocate that 10 percent for $20 a barrel?

Mr. HODEL. The allocation provision provides the 10 percent would be allocated at a price established by the auction.

Senator BRADLEY. Does it make any sense to you that the first auction take place before the spot market price takes the upward ascent?

Mr. HODEL. I think the presence of this particular draw down plan will prevent the spike because what happens is that the President makes the necessary determination and the Secretary will then make the determination of how much oil will be made available for this month out of the Strategic Petroleum Reserve.

The presence of the possibility that all of the interrupted supply will be replaced by auction in that month makes it a very speculative matter indeed in the spot market for somebody to start running up the price. I think it is a market protection against that price getting out of hand. I am very optimistic that would be feasible.

With the amount of oil that we have in the Strategic Petroleum Reserve at the present time, which is approaching 290 million barrels and with the magnitude of across the seas imports that the country is presently experiencing, it is feasible to replace all of that oil for an extended period of time out of the SPR and not be in a position where speculation in oil is very desirable.

Senator BRADLEY. Your answer is no, you are not going to auction it prior to the runup in the spot market because you think there will not be a runup in the spot market?

Mr. HODEL. And the announcements about what is coming in the strategic petroleum drawdown will have an impact on that market.

Senator BRADLEY. Do you admit that if your assumption is wrong and there is a runup in the spot market, that is going to be a lot more expensive oil?

Mr. HODEL. Not if I understand the way the market will work, unless what is made available is less than what the market is seeking. Obviously if the demand is greater, the price will run up. If the demand does not exceed the amount we are supplying at that point, I would think it would have a leveling impact. Frankly the risk is that you make some available out of SPR and the price could be lower than what it ought to be on that spot market.

Senator **Bradley**. We can talk about this. Isn't that correct?

Mr. **Hodel**. I think I will probably have further opportunities to discuss this with the committee as well.

Senator **Bradley**. Could you tell me why it is not in our national interest to fill 300,000 barrels a day as the Congress stated 2 years ago?

Mr. **Hodel**. The Congress left some discretion to the President in that regard. We have recommended that the fill rate be at the 220,000 BPD level because we believe at that level we minimize the risk of above ground storage at the present time and that the present rate of fill is moving us toward the 500 million level, with the ultimately targeted level at 750 million.

We have an excellent record I believe in filling the Strategic Petroleum Reserve. At the present time with the level of consumption of imported oil, the Strategic Petroleum Reserve is providing us much longer protection at its present level then was ever thought possible.

In other words, we set that goal at a time when we were looking for 5, 6, 7, or 8 million barrels a day imported, much of it from across the ocean.

Senator **Bradley**. Are budgetary limitations any problem here?

Mr. **Hodel**. Budgetary limitations are not supposed to be a factor, I believe, in determining what is directly in the national interest there, as my interpretation would be. I think that determination has to be based on what is needed as a fill rate for the Strategic Petroleum Reserve.

Senator **Bradley**. You would argue today that the cost of filling at 300,000 barrels a day is not the reason you are not doing it? You think the national interest is better served by only putting 220,000 in storage as opposed to 300,000?

Mr. **Hodel**. Phrased that way, Senator, it would suggest if the oil were free, I would not want to fill at 300,000 barrels a day and I could not say that in good conscience. I think it is a weighing process. In the circumstances, I think we can put good emphasis on the needs end of the spectrum.

Senator **Bradley**. We could look at 220,000 as a minimum and if the money is available, indeed you might fill at a higher rate?

Mr. **Hodel**. It is my present understanding that is where we are headed.

Senator **Bradley**. The international dimension to this energy problem is quite apparent. How do you feel about coordination among countries and what role do you think the IEA should play?

Mr. **Hodel**. I have indicated I strongly favor an active role on the part of the United States in international activities, because they are so intimately connected with our domestic situation. It seems to me we ought to use not only IEA but a whole host of other committees.

Senator **Bradley**. You intend to play an active role in that policy formulation?

Mr. **Hodel**. Senator, with some concern, the first time I had occasion to say anything as an appointee was to the Board meeting of the U.S. National Committee of the World Energy Conference. I went to them and suggested that we would like to work with them, to work out some major areas of concern to U.S. delegates to the

World Energy Conference this fall in New Delhi. I think for too long the United States has let itself be represented in a very diversified way and we should at least know as a Nation those things we think are of the greatest concern.

Senator **Bradley**. Who is your Assistant Secretary for International Affairs?

Mr. **Hodel**. The Assistant Secretary for International Affairs, Henry Thomas, has resigned. He resigned shortly after I arrived. I indicated at my first meeting with Assistant Secretaries that if people were not in a position to stay with me for a couple of years, I would hope they would give serious—if they had different career plans, that they would give me an opportunity to fill the position.

Senator **Bradley**. Given the importance you put on this international role for yourself, you do expect soon to fill that position?

Mr. **Hodel**. I would like to fill it soon. I do not have a candidate at this point, and I also know how lengthy the process can be sometimes in going through the clearing of a candidate and getting one appointed. I would like it to be soon.

Senator **Bradley**. When do you think we can expect you to submit your candidate for our review?

Mr. **Hodel**. At this point, Senator, I simply do not know. What I need to emphasize and what I suspect your concern is——

Senator **Bradley**. Two years, a year. I do not mean next week. If you put international energy as a critical part of your mission, then we have to get somebody in there to give you some assistance.

Mr. **Hodel**. It needs to be the right person. In the meantime it is a terrible burden on my Deputy, who is very active in that area.

Senator **Bradley**. We can assume within 6 months?

Mr. **Hodel**. Certainly I hope before that, Senator.

Senator **Bradley**. Just one or two more questions.

As you know, Three Mile Island was an unfortunate accident and we are presented with a problem which is how to clean up Three Mile Island. This committee has endorsed a concept based on cost sharing of State, Federal, nuclear utility industry, the affected utilities, the ratepayers and stockholders.

My question is, do you favor that cost-sharing approach for the cleanup of Three Mile Island?

Mr. **Hodel**. I have to say I am not familiar with the details of that approach. I apologize for not having followed that. In principle, it sounds like a very appropriate procedure.

Senator **Bradley**. It has been outlined by Governor Thornburg of Pennsylvania and Governor Kane of New Jersey has accepted it. It has been introduced by Senator Heinz and me.

Mr. **Hodel**. I will give that a high priority review, Senator.

Senator **Bradley**. One last question. On the nuclear regulatory authorization, there was a little matter put on protectionism measures for uranium. Senator Domenici has gone. He is the author of that.

Are you in favor of this kind of protectionism?

Mr. **Hodel**. Senator, as soon as we put the word "protectionism" on it, it gets very hard for a representative of this administration to favor it. We do feel strongly that we need to maintain our capability in the international market. I have looked at that particular situation. It appears at the present time that approximately something in the neighborhood of 10 percent of uranium is being imported and it was not the intention of that amendment to prevent imports at that level.

The administration has opposed that provision in principle, and I think justifiably; but we recognize that at the present level of uranium imports, what was proposed in the amendment would not come into play.

Senator **BRADLEY**. I did not hear you, did you say you opposed it?

Mr. **HODEL**. In principle, we oppose that kind of legislation.

Senator **BRADLEY**. Do you oppose that amendment?

Mr. **HODEL**. I believe that the administration has taken that position previously.

Senator **BRADLEY**. I would like to submit for the record if I could at this time, Mr. Chairman, an article from the Wall Street Journal, September 30, called "Nuking Free Trade." It supports your position and the administration's.

[The article follows:]

[From the Wall Street Journal, Sept. 30, 1982]

NUKING FREE TRADE

Faced with 4,000 unemployed uranium miners in New Mexico, Sen. Pete Domenici has devised a fancy bailout that, it is claimed, won't cost taxpayers a dime. In a bill now coming before Congress, he proposes to increase the demand for uranium while limiting the supply of imports—meaning, of course, more jobs for the folks at home in New Mexico. But it will also mean higher electricity bills and a damaged free trade policy for America.

Part of the industry's problem is that plentiful reserves of uranium have been found in such places as Canada and Australia, where miners' wage rates are relatively lower. Around 20% of the uranium now used in the U.S. comes from abroad and Sen. Domenici predicts the figure could near 40% within a couple of years. At the same time, uranium demand has slackened because of electricity conservation and the generally stagnant state of nuclear power development (due in no small part to environmental squabbles and bureaucratic hang-ups).

Sen. Domenici's maneuver utilizes some end-around amendments to the Nuclear Regulatory Commission's authorization bill, which has already cleared the conference committee and is expected to return to the floors of both houses tomorrow. For a start, the measure would impose an import quota of 37.5% of all uranium use in the U.S.—a figure the senator thinks will be reached under existing contracts within two years. In other words, any uranium purchaser looking for a new contract will probably have to turn to a U.S. supplier.

In addition, the measure calls upon the secretary of energy to "enhance the use" of U.S. uranium to reverse the inroads made by imports. One suggestion is to alter the process of enriching nuclear fuel to require more raw uranium and less electricity. According to one expert estimate, the changes would require an additional 1,000 tons of uranium, at a cost of $50 million, to turn out the same amount of fuel that we get now. While part of the higher uranium costs will be offset by lower electricity charges, the bulk of the costs will be passed along to utilities and, ultimately, to consumers.

Sen. Domenici's import quotas are particularly unwelcome at a time of intense protectionist pressures around the globe. Even the "free trade" advocates in the Reagan administration have been cowed by demands for protection for U.S. automobiles, steel, textiles and even book publishing. Uranium quotas would take the U.S. another step down the slippery slope of protectionism.

Uranium miners would be better served by a prosperous economy, less burdensome government spending and, of course, less discouragement of nuclear power investment. These goals are not likely to be served by import quotas or mandated increases in uranium use at our enrichment plants.

Senator **BRADLEY**. Thank you very much.

The **CHAIRMAN**. Thank you, Senator.

Senator Bumpers.

Senator **Bumpers**. Mr. Hodel, I will not detain you much longer and will probably want to submit a few questions for you in writing for your comments.

Let me ask you first of all, as Under Secretary of the Interior, what if any responsibilities did you have for administering the Coal Leasing Act?

Mr. **Hodel**. Let me say first of all, that the way we operated at the Department of the Interior was that the Secretary was the chief executive officer and I served the role that would normally be attributed to the chief operating officer, which meant that in carrying out the decisions, participating in the making of the decisions, carrying them out, I had a very active role.

With regard to the Coal Leasing Act, I would assume many, if not all, of the decisions that were made there came through me either to the Secretary, or in his absence for my signature or decision.

Senator **Bumpers**. Let me say at the outset of this line of questioning that one of the things that had concerned me about your nomination was related to a personal experience.

The Powder River Basin sale was on April 28. On May 18 I wrote to you with a series of specific questions regarding that sale. I did not get any response until 5 p.m. on July 14 which was the day before the House was holding hearings on that sale on July 15 in which I was to testify. Obviously that was not very much leadtime. Two months elapsed before I heard from you regarding the questions. Do you have any comments on why it took 2 months to answer those questions?

Mr. **Hodel**. Yes, I do, and it does not deal with those specific questions. It deals with the manner in which responses to correspondence on substantive issues were handled within the Department of the Interior. The correspondence is received, cataloged, distributed to the appropriate bureau, where it was then distributed to the appropriate person within that bureau at some level to prepare the factual response and the first draft of an answer. That worked its way back up through that chain and what frequently happens, particularly with significant issues, was that on its way back up through the chain, policymakers, professional career, right on through political appointees, saw changes they thought had to be made to correctly state the response. It is not a satisfactory situation, but I think that is factually accurate as to what happens to much of that kind of substantive correspondence.

Senator **Bumpers**. Do you think it might not have been appropriate to have some underling place a phone call saying look, this is going to take a while?

Mr. **Hodel**. I distinctly think it would have been appropriate, Senator. Upon occasions we worked hard to try to get some early response when we saw the correspondence was not going to be promptly handled. I must say I do not think we ever succeeded in conquering that problem.

As far as I know, it was not because of some timing consideration with respect to the response to that letter.

Senator **Bumpers**. You can understand my suspicions having gotten an answer just a day before the Powder River sale was getting ready to be exposed in public hearings.

Mr. **Hodel.** I can understand that and unfortunately I am afraid the record would tend to indicate unfortunately this was the pattern. That was not the case. It related to the fact that it took that long to answer. I think we would find, unfortunately, a long record of slow responses, but not in any way willful.

Senator **Bumpers.** One of the strongest characteristics your supporters have said you have is that you are a great administrator. Needless to say, I had to question that in light of my own one-time experience. I would hope that would not be the case when you become Secretary of Energy.

Mr. **Hodel.** My understanding, Senator, is we have in place and I have yet to test it, a much more effective mail handling system at the Department of Energy. If so, I will be delighted.

Senator **Bumpers.** Let me ask you more regarding the Powder River sale which offered somewhere around 2 billion tons of coal for sale.

Mr. **Hodel.** I will defer to your numbers on it at this stage. I do not have a clear recollection. It was a large sale.

Senator **Bumpers.** One of the things that concerned me about the Powder River sale was that the Department, for some reason, and certainly with no oversight by Congress and no consultation with Congress, changed its determination of what would be an acceptable bid by changing what had been in the past a policy of accepting bids that met the fair market value criteria to what was called an entry level bid.

The Powder River basin sale brought $40 million less than it would have brought had the old criteria been used. If they had still used the fair market value criteria for the invitations for bids, the leases would have brought $40 million more. The tracts might not have brought that much but you could not have leased them unless the bids were at least that much.

There was a second question involving the Powder River sale, and that was whether or not the industry had seen the values that had been placed on that coal before the sale.

Can you tell me whether or not, No. 1, you had anything to do with changing the sale procedures, and No. 2, whether or not industry did in fact see those figures before they were asked to submit their bids?

Mr. **Hodel.** I do not recall to what extent I was directly involved in that process or not, but it would not surprise me at all to find that I was. Normally in that situation, we would receive a number of recommendations from the staff as to what should be done and what the justifications and arguments were. I think it was subsequent to that time we had further dissussions about this entry level versus fair market value level versus minimum acceptable bids.

One of the changes that was suggested at one time in coal leasing was that we ought to use a phrase like "minimum acceptable bid." I argued, so I know I was in the policy chain at that stage, that if we say "minimum acceptable bid," we have established pretty much the price at which it will be bid, because we have said if you bid that level, we will accept it. I said I thought we ought to be trying to move in the market direction. This was the advice that some staff was providing. If you go in that market direction you say we set a minimum bid which is based upon a level sufficient to keep out what you might consider nuisance bids so that people who really are not seriously seeking to acquire the coal for development cannot throw in a nuisance bid, but beyond that, you try to leave the pricing to the market to establish.

Prior to that time my understanding is the Department of the Interior had done a considerable market analysis and had determined this is the price at which it ought to be sold. That is not necessarily a fair market value. That is a knock-down price determined with reference to a market but not necessarily what we define as a fair market value.

My understanding is the Department is now in litigation over this matter, if it is the Powder River sale I am thinking of.

Senator BUMPERS. I am pleased to hear that.

One of the things of course that many of us raised objection to was not only the change in the procedures but also the fact that this 1.6 billion tons of coal brought an average price to the U.S. Government of about 3 cents a ton. Studies showed that private coal in the same area was leasing for 18 cents a ton. For the 11 tracts that received bids, only one bid was rejected. One of the tracts went for as little as six-tenths of 1 cent. Some of it brought as much as 8 cents so that the average came out at about 3.6 cents.

Did you raise any questions about that? Some of us raised questions with the Department about the propriety of accepting bids at 3.6 cents a ton, which was fives times less than the private sector was getting for coal in the same area.

Mr. HODEL. I do not recall whether I personally raised questions. If it is the sale I am thinking of, I believe we rejected one of the bids.

Senator BUMPERS. One bid was rejected.

Mr. HODEL. It was based on the evaluation that that bid did not meet the fair market value criteria. Those criteria were applied by the Department and if they were met, the bids were accepted. We are very concerned, as you well know, Senator, with the level of revenues we obtain. That is a matter of concern to us.

Senator BUMPERS. Do you think possibly one of the reasons the bids were so low is because there is a glut of coal on the market in this country? There are 150,000 to 200,000 coal miners unemployed in this country right now.

Mr. HODEL. What we are saying is that may have very well been the fair market value as required by the statute. It goes then to the policy question of whether we should be leasing at that particular time.

Senator BUMPERS. That is my very next question. Completely aside from the propriety of leasing lands for five times less than what the private sector was getting, completely aside from the propriety of changing the sale procedures, completely aside from those things, the question was: Should we have been leasing coal in light of the fact that there was absolutely no demand for coal.

I take it from your answer there may be a question in your mind about the propriety of leasing coal under those circumstances.

Mr. HODEL. What I was meaning to suggest is I thought that was the next logical question in light of this analysis.

Senator BUMPERS. That is the next question.

Mr. **Hodel**. Not that there was necessarily in my mind at that time that question although I think we reviewed that whole question each time. There are policy considerations for the Government continuing to make available blocks of coal on a reasonably predictable schedule. We have a vast amount of that coal which is still owned. It may be possible that in terms of the consumer interest in America, 18-cent-a-ton coal being paid to the private owner is above what the fair market value ought to be because we are a monopolist on the Federal side in holding back.

It may well be that, by making sufficient reserves available where we find out what the market price is and by rejecting a bid which we do not think rises to the fair market value, I think we are trying to be consistent with the objectives of the statute and not put the Federal Government in the position of being a monopolist and not putting us in the position of trying to determine what that market must be but rather saying let the market develop it.

Senator **Bumpers**. Do you not think it could also be argued that 18 cents did not represent the fair market value because there was a glut of coal on the market, and it ought to be otherwise much more than that?

Mr. **Hodel**. That is possible, although if we are talking about a fair market value, we are talking about what the market is willing to pay. If there is an 18-cent contract that has been entered into previously so that you have 18-cent coal there and a new block of coal comes on the market, that new coal is going to be priced by the people in the position to use it or acquire it, based on what they think the market requires.

I think the market test really is what the market does offer.

Senator **Bumpers**. Do you not agree that our resources—oil, gas, coal, all of it—ought to be used very judiciously to make sure this country's needs are met, and that coal leasing ought to be predicated on the national need and not just to help the companies build their coal reserves?

There is not anything mysterious about a coal deposit. You never know whether you are going to hit oil or not but you can delineate a coal field very easily. Everybody knows how much is there, the depth of the seam, what the structure is, and how difficult it is going to be to mine. Admittedly it takes a while to get a coal mine going on a big scale, but here not only did we lease 1.6 billion tons at below market value under new procedures, and there was a certain arrogance in the Department when we raised these questions about the propriety of issuing the leases. Not only that, but Interior has another 5 billion tons they are getting ready to lease, which cannot possibly be justified under any circumstances except to help the coal companies build their reserves.

Mr. **Hodel**. Senator, obviously I should go back and review that sale in greater detail, but let me respond in part.

I think it is not at all obvious to me that all we were doing was building the reserves of coal in those coal companies. It appears to me that, when we put those tracts up, if they are bid at a price which we can determine through the criteria is within the range of a fair market value, then we ought to make it available because the beneficiaries are the American consumers.

The net result may be that another tract that is much more expensive to mine is not mined. It is held for later mining and that would appear to be an increase in inventory but the fact is that it means the consumer is getting the less costly coal earlier.

Senator BUMPERS. There is no assurance of that though.

Mr. HODEL. I agree there is no assurance, but it is possible.

Senator BUMPERS. Do you know how much Federal coal was under lease that had not only not been mined but for which no mine plans had been approved, at the time this sale was held?

Mr. HODEL. No; I do not.

Senator BUMPERS. Billions of tons.

Mr. HODEL. I am aware there were many leases on which no activity was taking place.

Senator BUMPERS. Absolutely.

Mr. HODEL. Although we like to think coal is a readily delineated resource, my understanding is that while it is often true, it is often not true as well, and in some of those cases we are looking at nominal coal reserves which at the time being are not economically feasible in the present market or other, and that if we want to continue to see utilization of this resource and an increase in its use for the benefit of the people, then we need to make it available to the market in some reasonable quantity.

I used the word "reasonable." I think honest men can differ over whether that level is reasonable or not and I understand clearly you would have a different opinion from ourselves.

Senator BUMPERS. Mr. Hodel, I do not want to prolong this. Let me ask you one more question.

Did industry see the minimum acceptable bid estimates prepared by the Department before they bid?

Mr. HODEL. I do not know. I read the press accounts and the accusations.

Senator BUMPERS. Did you not ask for an investigation of that?

Mr. HODEL. That was looked into. I do not recall now what the disposition was. I do not know whether they saw them.

Senator BUMPERS. Did you not consider that an issue of some magnitude as to whether or not the people who were bidding actually saw how much they would have to bid in order to get the leases before the sale was made?

Mr. HODEL. Senator, again I would have to go back and look at that. We had very few things around the Department of the Interior that remained secret or confidential. I do not know. My recollection is that matter was investigated. I think it was investigated by the GAO and possibly our Inspector General. At this point I would have to go back and verify it.

Senator BUMPERS. Could you get that for me?

Mr. HODEL. I can certainly try. I will try to get a little better history of what transpired in that matter.

Senator Bumpers. I would appreciate that. We have really hit a stone wall over there in some of our efforts to try to find out what happened.

[The information follows:]

Senator Bumpers asked a series of questions regarding my involvement in the Power River coal sale and specifically about whether certain information was seen by coal companies prior to the sale. The Senator inquired whether such circumstances in any way compromised the sale, and asked that a full explanation be provided relative to this matter. In response to the Senator's inquiry, I have obtained from the Department of the Interior a number of documents:

1. Letter to Senator Jackson signed by me, dated July 14, 1982, transmitting answers to 28 questions covering a wide range of matters relating to the Powder River Sale, including detailed questions and answers relating to fair market value, need for coal, and leaks of data relating to Minimum Acceptable Bids.

2. Copy of prepared testimony by Assistant Secretary Garrey E. Carruthers, "Before the Mines and Mining Subcommittee, Committee on Interior and Insular Affairs, U.S. House of Representatives, on H.R. 5895, A Bill to Amend the Mineral Leasing Act of 1920. . . ," dated June 10, 1982. This testimony appears to have been in further response to question number 28 from Senator Jackson. A portion of the testimony deals with Interior's views on diligent development.

3. Letter to Senator Bumpers signed by me, dated July 14, 1982, transmitting answers to 13 questions covering a wide range of matters relating to the Powder River Sale, including detailed questions and answers on coal volumes, bid comparisons, fair market value determinations, and leaks of data.

4. Letter to Congressman Markey signed by me, dated July 14, 1982, responding to questions regarding the Powder River Sale and attaching copies of:

a. My concurrence in the establishment of post-sale evaluation procedures for the Powder River Sale, dated April 27, 1982;

b. The proposal for such procedures, dated April 23, 1982; and

c. A June 21, 1982 memorandum to the Deputy Director of the Minerals Management Service from the Associate Director for Onshore Minerals Operations.

5. Testimony of David C. Russell, Deputy Director, Minerals Management Service, Department of the Interior before athe House Committee on Interior and Insular Affairs, Subcommittee on Mines and Mining, July 15, 1982, in which he discussed the fair market value process and the Powder River Sale.

I am submitting copies of the foregoing documents for the record as part of the Appendix hereto.

My involvement clearly was as Chairman of the Minerals Management Board and as Under Secretary. I believe the answers provided in the various letters and testimony set forth Interior's and my views in the matter in great detail. It is my further belief the GAO has inquired into some aspects of this matter, but that, as yet, no report has been issued.

In the Department's July 14, 1982 letter to Senator Bumpers, it is stated that MMS in Reston was directed to initiate an investigation into the issue of a leak. I have contacted MMS regarding this direction and have indicated that it has a continuing obligation to pursue this matter. I have been assured by MMS that it will report the results of its inquiry directly to you.

Finally, a question was raised regarding the delay in responding to your letter of May 18, 1982, in which it was suggested that it would have been helpful if a telephone contact had been made with your office explaining the delay. I am informed that staff of the Office of Congressional and Legislative Affairs at the Department of the Interior was in communication with the staff of your office regarding our response and had indicated the difficulty in assembling all the information required to respond to the various Congressional requests on this subject. Nevertheless, as a matter of standard operating procedure, I am hopeful that delays of this sort can be eliminated at the Department of Energy.

Senator BUMPERS. Let me ask you one other question. Do you favor Federal energy assistance to people to help them pay their utility bills in these days?

Mr. HODEL. Senator, I am not sufficiently familiar with that matter to respond appropriately. I have long advocated that rather than trying to adjust utility bills in order to try to take into account the ability to pay of low income households, we would be far better with direct assistance. In principle, I find that is preferable to the alternative.

What I simply do not know at this point is what the structure is of that program and who administers it.

Senator BUMPERS. Do you know what the average cost increase to the consumer of natural gas, will be this year?

Mr. HODEL. No.

Senator **Bumpers**. It is going to vary from 20 to 35 percent depending on the pipeline price. Are you familiar with what we call take or pay contracts?

Mr. **Hodel**. In general, yes.

Senator **Bumpers**. Would you object if Congress just obliterated those?

Mr. **Hodel**. I would much prefer to see the natural gas issue dealt with on a broader basis than simply focusing on one aspect of the problem, which is the take or pay contract. I would hope that we could deal——

Senator **Bumpers**. Do you consider take or pay contracts the culprit in some of the gas price increases?

Mr. **Hodel**. I consider the take or pay contract a factor in the price increases, and in some areas I understand it to be operating precisely that way.

Senator **Bumpers**. When Congress started the phased decontrol of natural gas, the promise was constantly made that this was going to generate a lot more exploration, produce a lot more reserves, make gas more competitive and therefore the price could even come down.

Today we have a glut of gas. Price is not coming down. The promise has not been kept.

Mr. **Hodel**. Senator, all but the last part of the promise was kept. The exploration for natural gas did increase, although not as greatly as deregulated oil. It is still up ten percent this year. We found an increase in the gas reserves for the first time in years, as I understand it.

We had considerable activity in the area but now because of the changing market—economic conditions affect it—my understanding of one of the serious problems is that industry is finding it is able to utilize oil as a substitute for natural gas now at a price which is preferable to industry to the natural gas, a net result of which is that the whole cost to the system is having to be borne by residential consumers so that the cost per unit is going up on natural gas. This is one of the ways it is operated.

That situation can be attributed to some of the vagaries of the regulatory process. I believe that, in view of the extra gas we think we now have and the decreased demand, if we did not have the regulatory and statutory constraints that we do have, we would find that in fact the rest of the prediction would have come true, that the prices are down.

The problem is, as you and I well know, that to change that today to something better is not an easy thing to do.

Senator **Bumpers**. I admit it is complex at this stage of the game.

Mr. **Hodel**. There is a very significant vested interest that affects the consumer and the systems which provide them service, very directly and very greatly. That is what makes it such a complicated issue.

I do believe we would have a lower gas price today, based on what I have heard and the amount that is available if we were not locked into the particular system we are in.

Senator **Bumpers**. One of your great supporters here on this committee is Senator Jackson. Do you agree with him there ought not be any drilling in the wilderness?

Mr. **Hodel**. Senator, the drilling in the wilderness issue was one which this administration strongly proposed be blocked last spring. We were prepared, as you know, to support legislation which would prohibit further activities including exploration activities on the ground in the wilderness.

Senator **Bumpers**. When you say "we" you are not including Secretary Watt, are you?

Mr. **Hodel**. I surely am.

Senator **Bumpers**. As being opposed to any exploration and drilling in the wilderness area?

Mr. **Hodel**. Senator, rather than proposing extending the Wilderness Act for 20 years, which had been one of the proposals under consideration last April or May, Secretary Watt proposed legislation which would have prohibited all activities on the ground in the wilderness areas for a 20year period, to the year 2000, at which time Congress would have the opportunity to reexamine.

Senator **Bumpers**. The proposal was for 20 years. Right now there is a permanent ban. Is that not true?

Mr. **Hodel**. Right now, actually right now, at the end of 1983, it becomes a permanent ban in established wilderness. My understanding was we were proposing, if I recall the bill correctly, we were willing to forgo it in wilderness and say look, this is the wrong time to make this argument, if you can do satellite exploration, fine, but do not enter the wilderness to do further exploration.

We were prepared to forgo that. It was my understanding that prior to that time it had been thought that was really a substantial move in the direction of trying to resolve that issue. It was not subsequently seen that way. It was not treated that way and the rest of it is history.

That certainly was our intention at that time.

[Subsequent to the hearing Mr. Hodel supplied the following:]

THE SECRETARY OF ENERGY,
Washington, D.C., December 6, 1982.

Hon. DALE BUMPERS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BUMPERS: This is a followup to our telephone conersation on December 1, 1982. You will recall that I was concerned whether my answer during the hearing to your question on the wilderness legislation had been completely accurate. Since the hearing, I have had the opportunity to read my answer from the transcript and also to review a copy of the legislation drafted by the Administration earlier this year (H.R. 5603).

During the hearing, you had inquired whether we opposed "exploration and drilling in a wilderness area," and I responded that I recalled our drafting legislation that would have prohibited exploration activities "on the ground" in the wilderness areas. Review of the proposed legislation shows that it permitted such activities subject to strict environmental standards. My response at the hearing correctly reflected my recollection that, in proposing the legislation, I did not believe that language would survive in the legislative process and that we actually were prepared to forego on the ground exploration activities in the wilderness.

I did want the record to be clear on this point and will submit this letter as an insert to the transcript of the hearing.

Thank you for your courtesy and understanding.

Sincerely,

DONALD PAUL HODEL.

Senator **Bumpers**. Mr. Hodel, just two final questions.

No. 1, you have said in your statements you are a great proponent of conservation. Let me ask you this, what do you think is the best and fastest way to achieve conservation?

Mr. **Hodel**. The best and fastest way to achieve conservation is for there to be an incentive for the people who are installing energy using devices and using energy.

Senator **Bumpers**. Do you agree with tax credits for conservation practices?

Mr. **Hodel**. Tax credits can have a stimulative effect on those practices. If there is an incentive, it will help encourage it.

Senator **Bumpers**. That puts you in opposition to the President.

Mr. **Hodel**. Only if I propose them.

Senator **Bumpers**. We are just playing games here right now.

Mr. **Hodel**. I am sorry, Senator. I did not mean to be flip in that answer. What I am saying is I recognize that tax credits or other incentive systems will have an impact on the way in which conservation is utilized. I happen to believe that. You asked me what I think is the quickest and best way, it is an incentive. I happen to believe—one of the greatest incentives is if the energy companies, whether utilities or the local oil distributors or somebody else, also has an incentive to sell conservation.

That is why I like the approach we were trying to take where we were going to put insulation in homes of electric users because the utilities had an incentive to do that. They would turn into salesmen for conservation. Then it will happen.

As long as we force feed it and we decide this is the area we want to push this year and we will put this incentive here or next year we are going to put money over there, I think we are going to continue to have this wandering back and forth and the lack of consistency. It is very hard for the private sector to plan what it wants to do. In the long run, consistency there ought to be market oriented.

Senator **Bumpers**. I would like to pursue that further but I will not. Let me ask you the final question. Do you favor the lottery system of leasing Federal lands for oil and gas? This happens to be one of my favorite subjects. The chairman is disappointed because I am just now getting around to it.

Mr. **Hodel**. This may astonish you and it will probably astonish my friends at Interior but since it is not now my responsibility——

Senator **Bumpers**. We are going to get the truth now.

Mr. **Hodel**. I think we should examine this question of what constitutes a known geologic structure and make sure that the lottery system is not substantially affecting the Federal returns.

What I need to recognize and I know you know this better than I, in the end, the bulk of the money the Federal Government obtains from oil leases particularly comes not from the bonus but from the royalties and the taxes that are collected as a result of the development. There is a significant benefit to us, we believe as a society, in making it or encouraging people to look. That is a countervailing argument.

I do think we need to look at whether it makes sense to be leasing in a lottery a tract very close to tracts which we know have developed significant resources. I think that definition deserves to be reviewed and I believe it will be reviewed.

Senator BUMPERS. Do you agree with me that the present existing legal definition of a known geological structure absolutely defies the human mind's interpretation?

Mr. HODEL. As I say, I think it should be reviewed, Senator. I really do.

Senator BUMPERS. Thank you. Thank you, Mr. Chairman.

The Chairman. Thank you very much.

Secretary Hodel, you have been at the table for several hours answering a series of questions, sometimes very difficult to answer. I believe that everyone who has heard your answers to the questions must have the impression at this point that you are very candid. You are very willing to discuss the issues, very open in your responses.

It is a difficult role for somebody in your position. You know that no matter what your personal opinions are, they are constrained by the policymaking processes of the administration, which are diverse and many, and they will bind your actions in the future, not just direct them.

I think there are some members of the committee who have indicated a desire to submit some questions in writing. I will ask that those questions be submitted by the close of business today. I hope that all of the members can accommodate that to give you the opportunity to get responses back at the end of the week so the members can judge those responses by the time we get to the scheduled business session next week. I hope that you and all members can comply with that schedule.

With that, let me thank you very much for your appearance and wish you well.

Mr. HODEL. Thank you, Senator. I appreciate the courtesies of the committee and all of its members. I look forward to responding promptly to those questions. Thank you.

Mr. CHAIRMAN. Thank you very much.

Our next witness is Ms. Martha Hesse, who has been nominated to be Assistant Secretary of Energy for Management and Administration.

The senior Senator from Illinois, Senator Percy, had hoped to be here today to introduce Ms. Hesse to the committee and support her nomination. Because of last minute conflicts, he had to change his plans. He cannot be here and he has asked that his statement be included in the record. Without objection, his statement will be included in the record at this point.

[The prepared statement of Senator Percy follows:]

PREPARED STATEMENT OF HON. CHARLES H. PERCY, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Mr. Chairman, I am pleased to have the opportunity today to introduce Ms. Martha Hesse to this Committee, and urge that her nomination be acted upon favorably.

In her new post as Assistant Secretary for Management and Administration, Ms. Hesse will face the difficult challenge of helping the new Secretary restore morale and effective management to an agency which has always had a turbulent existence. In the Carter years, it suffered from too many conflicting priorities and crises—some of which were largely self-imposed. Over the past two years, budget and personnel cuts have taken their toll.

Martha Hesse brings excellent qualifications to the task, both as an Illinois businesswoman and as a top aide to Joe Wright in the Commerce Department and more recently at OMB. Ms. Hesse worked long and hard on the Administration's energy reorganization proposal. If the Administration decides to resubmit that legislation, Ms. Hesse will be in a key position to help again the that effort.

And as an Illinoisan, Ms. Hesse knows about our energy concerns—about the high priority we give fossil fuels, conservation, renewable resources, and energy research of all kinds. We need Midwesterners in senior positions at the Energy Department to make sure policies developed there have the balance, the evenhandedness, the reasonableness, that people in our neck of the woods like to see.

I commend her highly to this committee, and wish her well.

The CHAIRMAN. I might just parenthetically note there are other statements in support of the nomination of Mr. Hodel that will also be made a part of the record in full at the conclusion of his testimony and at the conclusion of the questions of Mr. Hodel.[1]

Since February of last year Ms. Hesse has served in two management positions within the Federal Government. She was Associate Deputy Secretary of the Department of Commerce, and beginning in May of this year, she served as Executive Director of the President's Task Force on Management Reform.

Ms. Hesse holds an MBA degree from the University of Chicago, and she has 15 years of management experience in the private sector. For 12 years she was director and chief operating officer of SEI Information Technology, a data processing consulting company located in Chicago.

On the basis of her demonstrated ability and experience, Ms. Hesse is well qualified for the position of Assistant Secretary of Energy for Management and Administration.

Ms. Hesse, we welcome you to the committee. We are looking forward to your testimony. As you know, before we proceed, the rules of the committee require that all nominees be sworn in connection with their testimony. In addition, all nominees are asked four questions.

[Whereupon, Ms. Hesse was duly sworn by the chairman.]

The CHAIRMAN. Please be seated.

Those four questions that are asked of all nominees who are nominated to positions in the administration are as follows.

Will you be available to appear before this committee and other congressional committees to represent Departmental positions and respond to issues of concern to the Congress?

Ms. HESSE. I will.

The CHAIRMAN. Your informational statement has been submitted to the committee. However, it is required that this statement be made public unless the committee decides special circumstances justify an exception. Do you have any objection to the publication of your informational statement?

Ms. HESSE. I have no objection.

The CHAIRMAN. Are you aware of any personal holdings, investments or interests that could constitute a conflict of interest or create the appearance of such a conflict should you be confirmed and assume the office for which you have been nominated by the President?

Ms. HESSE. As I have indicated in my informational statement to the committee, I maintain a commodities investment account with Bear Stearns & Co. By letter to Bear Stearns, I have directed them to invest only in interest rate futures for my account. A copy of this letter is on file with the committee. To my knowledge, I have no conflicts of interest or appearances thereof.

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[1] The statements are set forth in Appendix IV.

The CHAIRMAN. Are you involved or do you have any assets held in a blind trust?

Ms. HESSE. No.

The CHAIRMAN. You may proceed.

STATEMENT OF MARTHA O. HESSE, NOMINEE TO BE ASSISTANT SECRETARY OF ENERGY FOR MANAGEMENT AND ADMINISTRATION

Ms. HESSE. Thank you, Mr. Chairman. I do have a prepared statement but because of the late hour, I would like to submit my statement for the record and then answer any questions you may have.

The CHAIRMAN. Fine. It will be made a part of the record.

[The prepared statement of Ms. Hesse follows:]

PREPARED STATEMENT OF MARTHA O. HESSE

Mr. Chairman and distinguished members of the committee, this is a special occasion for me, as I consider it a great honor to be President Reagan's nominee for Assistant Secretary for Management and Administration in the Department of Energy.

I am particularly pleased since this position deals with the business side of the Department where my years as a manager are particularly relevant. I do not represent myself as an experienced Government technician, despite my service over the last 2 years, but rather as an experienced corporate manager who has had responsibility for management activities similar to those of the Assistant Secretary for Management and Administration. I believe I can bring the best of the private sector approaches to the improvement of DOE's operations.

Since you are already aware of the major functions of the office, I would like to spend the next few minutes describing to you my qualifications and why I believe I am well qualified to assume this role. I have over 17 years of management experience, the last 2 of which have been in this administration. I am particularly proud of my role in cofounding a company where I served as director and chief operating officer. This company began with just two people, and we built a multi-million dollar professional services company without outside financing. I was responsible for the business side of the company, including corporate strategies, market approaches, organizational structures, financial plans, and personnel and compensation structures. I was also responsible for the recruitment and management of an extensive professional staff. As I am certain you are aware, when you start a new business you must be a jack of all trades. In performing these multiple functions I developed a number of skills which are clearly relevant to the duties of the Assistant Secretary. These skills will enable me to perform the job efficiently and effectively.

During the last 2 years I served as the Associate Deputy Secretary of Commerce and as the Executive Director of the President's Task Force on Management Reform. While in the Commerce Department, I was directly involved in assisting the Deputy Secretary in managing the overall operations of the Department. This experience gave me my first introduction to Government operations.

I then moved to the Office of Management and Budget to assist in the reform of the management systems of the Federal Government. It is my view that such a reform can only be conducted with the cooperation and assistance of the career civil service. For that reason, my entire task force was composed of career Government employees. The task force has now completed its first assignment to develop a basic framework for systems improvement, and is in the process of turning these management projects over to the agencies where they belong.

I have come here today to tell you not that I am a Government manager, but that I am a business executive who will utilize sound business practices in improving the operations for which I will be responsibile. I am committed to effectively managing the ongoing energy programs of the Department. I believe my experience in the Government is useful and demonstrates my commitment to manage well, using members of the career service who are the backbone of the management operations of Government.

Mr. Chairman, I recognize that because of the continuing debate over the future of the Department of Energy, you and the other members of this committee are particularly concerned about the ongoing management and operation of the Department. Although the President has proposed to transfer the authorities and responsibilities of the Department of Energy to the Department of Commerce, and some other Federal agencies, I want to emphasize that as long as it remains as a separate Department, I will do my best, within my areas of responsibility, to implement the energy policies and programs of the Reagan administration, to fully discharge the Department's statutory responsibilities, and to act in accordance with the statutes that govern the structure and operation of the Department.

I will be happy to answer any questions you may have.

The CHAIRMAN. Might I ask of staff if there are any Senators who have asked for the opportunity to appear and ask questions of this nominee?

I announced earlier it would be my intention to ask you to make your statement and then recess following any questions. My understanding is all members of the committee have been notified of that intention and have raised no objection to that proceedure, so it is my intention to proceed in that manner.

I know of no members who wish to interrogate you. There may however be the possibility that they might submit questions in writing. Again, we would hope they submit those questions by the end of today so you can respond to them by the end of the week.

If there is no objection to that, it will be so ordered, and we will anticipate the answers will be filed by the end of this week. It is our intention of course, at the business session next Tuesday, that the consideration of the nominations, yours and Mr. Hodel's, will be the first item of business.

I do commend you for your statement. You have stated, and I want to highlight for the record as Secretary Hodel did, that although there is a reorganization request pending before the Congress in the form of legislation, that until the Congress acts upon that favorably, it would be your intention as well as Mr. Hodel's to administer the Department as it is now constituted under the existing laws that apply to the Department of Energy.

Ms. HESSE. Mr. Chairman, that is our highest priority.

The CHAIRMAN. I appreciate that. I understand the dilemma that a nominee must have, both Mr. Hodel and yourself. It is the official policy of the administration to ask for a change of organization. That brings uncertainties to those who must administer the Department, and uncertainty is also felt by those within the Department who must conduct the work. I think your statement is as good as can be made under the circumstances, and I commend you for it.

Ms. HESSE. Thank you.

The CHAIRMAN. Thank you very much for your appearance here today. We will have a recess of about 20 minutes, and then we will proceed to the public witnesses.

[Whereupon, a short recess was taken.]

The CHAIRMAN. The first public witness will be Dr. Elihu Bergman, executive director, Americans for Energy Independence, Washington, D.C. Dr. Bergman, you may proceed.

STATEMENT OF DR. ELIHU BERGMAN, EXECUTIVE DIRECTOR, AMERICANS FOR ENERGY INDEPENDENCE, WASHINGTON, D.C.

Dr. **BERGMAN**. Thank you very much, Mr. Chairman, for inviting us to express our views on the President's proposal to nominate Mr. Hodel as Secretary of Energy.

We have prepared a statement which has been submitted for the record and I will excerpt parts of it.

Americans for Energy Independence is a public interest coalition committed to the restoration of a secure energy system for the Nation by maximizing domestic energy production and conservation capabilities.

We favor a system that permanently relegates imported oil to a marginal role by reducing the demand for oil imports to less than 1 million barrels a day by the end of the decade. We think this is possible.

We feel that Federal Government leadership is critical in achieving these goals.

I would like to observe that we have heard frequently from this committee the same energy policy objective and the same conviction that Government involvement in achieving it is necessary.

AFEI is a nonpartisan organization that spans the political spectrum from liberal democrat to conservative republican and unites diverse interests and occupations in a common concern about the values of national energy security.

To give you an example of who we are, our leadership reflects this cross section. Our chairman is Hans Bethe, a Nobel Laureate who won the prize for explaining why the Sun keeps shining. He happens to be a strong supporter of peaceful uses of nuclear energy. He was the head of theoretical physics on the Manhattan project. He now is very active in the nuclear weapons freeze movement.

Our president, J. C. Turner, leads a major trade union and sits on the executive committee of the AFl–CIO. Our treasurer, John Nassikas, served two Republican Presidents as Chairman of the Federal Power Commission. The chairman of our executive committee, Robert R. Nathan, is one of the Nation's leading economists, a life long Democrat, and a past chairman of Americans for Democratic Action.

In this capsule of our leadership, you can appreciate the diversity of our organization.

We are pleased to endorse the nomination of Mr. Hodel as Secretary of Energy. We feel he is a candidate with the professional experience and distinction in energy affairs that the assignment requires. In addition to his other preparation, his on-the-job training as Administrator of Bonneville certainly equips him with valuable experience in all aspects of energy policy, the linkages of energy to economic development, and indeed the role of creative public policy in energy affairs.

Because this job is so vital to the economic well-being and the security of the country, we would like to express some of our expectations for its effective discharge. We are encouraged that the Secretary expressed in his testimony this morning that merger of the Department of Energy with some other entity does not rank high on his list of priorities. We would hope this position signals that the thought of eliminating the Government from energy once and for all be set behind us. Clearly we need Government involvement until national energy security is achieved.

Every other country in the Western Alliance is moving toward energy security as a result of a Government, labor, business partnership, working together to analyze the problems, set the goals and targets, establish priorities, deploy the necessary resources, and eliminate bottlenecks. It needs to be a joint effort here, too, more structured and more visible than has been the case and certainly operating at the highest level of Government.

We should not permit ideology nor abstract theory to interfere with commonsense in solving energy problems. This has been one of the principal messages this committee has projected to the American public over the past couple of years and it is a very wise message.

I would like to make an observation about another of our expectations that was expressed this morning in Senator Bradley's questioning.

In addition to getting DOE moving again and assuring the Nation and the world that we are serious about solving our energy problems, the Department should reassume a role as lead spokesman for the United States in matters of international energy policy.

There is presently no window to go to for an articulation of the American Government's role in the international energy arena. For example the interdependencies with our Western allies alone requires visible and vigorous activity within the U.S. Government to shape our shared activities and relationships.

The State Department is not the place for this activity. State conducts traditional diplomatic relationships. The place to assert the U.S. interest in a creative international energy policy is the Energy Department. Therefore we would hope the Secretary move with dispatch to appoint the Assistant Secretary for International Affairs and assert some leadership in this area.

I have indicated some of the opportunities and challenges for the Secretary designee. We do not expect to agree with him in all the policy decisions he takes and all the policy priorities he sets, but we are encouraged that a person with impressive substantive knowledge and experience in energy is being proposed for this position. We hope that Secretary Hodel will not be the last Secretary; but rather that he might attempt to be the best Secretary of Energy.

Thank you very much, Mr. Chairman.

[The prepared statement of Dr. Bergman follows:]

PREPARED STATEMENT OF DR. ELIHU BERGMAN, EXECUTIVE DIRECTOR, AMERICANS FOR ENERGY INDEPENDENCE, WASHINGTON, D.C.

Mr. Chairman and members of the committee, I am Elihu Bergman, Executive Director of Americans For Energy Independence (AFEI). On behalf of AFEI, I am pleased to accept your invitation to present our views on the nomination of Donald Hodel as Secretary of Energy.

AFEI is a labor-led public interest coalition committed to the restoration of a secure energy system for the nation by maximizing domestic energy production and conservation capabilities. We favor a system that permanently relegates imported oil to a marginal role by reducing the demand for oil imports to less than a million barrels per day by the end of this decade. Federal government leadership is critical in achieving this goal.

We are a nonpartisan organization that spans the political spectrum from liberal Democrat to conservative Republican, and unites diverse interests and occupations in American society in a common concern about the value of national energy security. AFEI's leadership reflects this cross-section of America: Our Chairman is Nobel Laureate physicist Hans Bethe, a strong supporter of nuclear energy and an advocate of a freeze on nuclear weapons; our President, J. C. Turner, leads a major trade union and sits on the Executive Committee of the AFL-CIO; our Treasurer, John Nassikas, a lawyer, served two Republican Presidents as Chairman of the Federal Power Commission; and the Chairman of our Executive Committee, Robert R. Nathan, one of the nation's leading economists, is a lifelong Democrat and past Chairman of Americans for Democratic Action.

AFEI is pleased to endorse the nomination of Donald Hodel as Secretary of Energy. In Mr. Hodel, the President has nominated a candidate with the professional experience and distinction in energy affairs that the assignment requires. We are encouraged by his apparent determination to be the best rather than the last Secretary of Energy. And because this job is vital to the economic well-being and security of the nation, we would like to express some of our expectations on how it might be more effectively discharged than in the past.

The International Energy Agency recently warned that the Western industrial countries still are in the energy danger zone, and oil remains our Achilles' heel. The energy organization of the world's major oil-consuming nations projected that pressures on the world's oil supply created by economic recovery and increasing needs of underdeveloped countries during the 1980s could lead to a resumption of oil shortages in this decade.

The warning is a reminder that oil glut or not, energy cannot be dismissed from our national agenda. An energy supply artificially expanded by recession simply will not support economic recovery.

The United States and its allies are suffering the consequences of a 1000% increase in oil prices during the 1970s, created by our excessive dependence on an OPEC-controlled world oil market. While they were riding high, the OPEC countries drained more than a trillion dollars worth of growth out of the Western economies. This diversion of our resources to meet extravagant energy costs is a direct cause of inflation, unemployment and high interest rates.

The question before the American people and government is not whether we can afford the expense of pushing on toward energy independence in these dismal economic times, but whether can afford to be forced back to the OPEC wells to fuel a growing economy.

Under the circumstances, any dismissal of the federal government's continuing and central responsibility for the achievement of national energy security is premature. Enery other country in the Western alliance is moving toward energy security as the result of a government, labor, and business partnership working together to analyze the problems, set goals and targets, establish priorities, deploy necessary resources, and eliminate bottlenecks. It needs to be a joint effort here, too, more structured and more visible than has been the case, and operating at the highest level of government.

In addition to preparing for the emergency of a sudden oil cutoff, the government must adopt policies that will accelerate development and commercialization of domestic alternatives to foreign oil and encourage greater efficiencies in energy use. There are a number of common-sense actions for which we have the capabilities and resources:

Maintain a high fill rate in the Strategic Petroleum Reserve, which is our first line of defense against a sudden oil cutoff.

Streamline and accelerate the licensing and permitting of new energy producing facilities involving domestic substitutes for oil.

Support educational and incentive programs to help individuals and industry use energy more efficiently and economically and to enable needy individuals and households to protect themselves against rising energy costs.

Assure a meaningful capability to produce synthetic fuels.

Encourage diligent energy exploration and production on federal lands and on offshore areas.

Encourage closer interdependent relationships with the other major energy-producing nations of the Western Hemisphere.

Our hopes for an economic revival that this nation so desperately needs demand that we move with new urgency to build an energy capability that can keep pace with economic growth. The eclipse of OPEC by the present oil glut should be viewed as an opportunity to regain control of our own economy, not as an excuse for relaxing our energy efforts.

However desirable in the abstract, reliance on the marketplace for signals about national energy choices is premature. Market pricing cannot yet serve as the definitive indicator of our energy choices because the marketplace does not reflect the real cost of imported oil, for which we pay a considerable security premium on top of the market price. Therefore, dollar cost alone cannot be the determinant of whether it is worthwhile to substitute a domestic energy resource, either production or conservation, for imported oil. It is the continuing responsibility of the Department of Energy to clarify these choices in terms of national interest, and free from any ideological biases or theoretical hangups.

If we forfeit our advantage in today's oil market, the oil-producing nations which wrought some devastation on the Western economies in the 1970s will be back to bedevil us.

This is the challenge that confronts the U.S. Secretary of the Energy. We believe that Mr. Hodel is up to that challenge, and we hope that this committee will recommend his confirmation to the Senate.

Thank you, Mr. Chariman.

The CHAIRMAN. Thank you very much.

Does your organization have an emphasis upon a single or dominate theme for the solution of the problem of dependence upon imported energy?

Dr. BERGMAN. No, Mr. Chairman. Our emphasis is on the use of all available and practical domestic resources, including higher levels of energy efficiency and energy conservation.

We favor things that work and work now because our problem is now. We hope however that in the longer term, we might move to sources of energy that still are in processes of research and development. Certainly the large-scale application of solar energy could be one, as is the application of fusion energy as one of the major new renewable sources is one of our hopes.

We are concerned about present dangers the threat to the Nation exists now. The last energy price shock in 1979, as the International Energy Agency told us recently, drained $1 trillion worth of economic growth out of the systems of the western industrial countries. This massive financial diversion is a direct cause of the economic tailspin that we are now experiencing, including the recession, the unemployment, the high interest rates, and the rest.

Therefore using what we have now, to achieve energy security soon is of the utmost importance.

The CHAIRMAN. What price does the Nation pay if it fails to have an adequate supply of energy?

Dr. BERGMAN. There are a number of costs, Mr. Chairman. I recall your hearings last spring on the world oil outlook in which a number of these threats are identified.

The major threat to peace in the world is the threat of energy insecurity. Access to oil can be a very critical priority for adversary nations, and competition for access to a limited supply of oil can lead to clashes in which surrogates or clients are involved, but ultimately which can produce clashes between the principal adversaries who are the major powers. This prospect is the ultimate threat of energy insecurity.

The CHAIRMAN. Thank you very much for your testimony today. I appreciate your appearance here.

Dr. BERGMAN. Thank you so much, Mr. Chairman.

The **Chairman**. I will call the next two witnesses as a panel, Mr. Charles Stevens, director of fusion engineering, Fusion Energy Foundation, and Susan Kokinda, Washington representative, National Democratic Policy Committee.

STATEMENT OF CHARLES B. STEVENS, DIRECTOR OF FUSION RESEARCH, FUSION ENERGY FOUNDATION, NEW YORK, N.Y.

Mr. **Stevens**. Thank you, Mr. Chairman, for inviting me here today. My name is Charles B. Stevens. I am director of fusion research with the New York City based Fusion Energy Foundation. It is with great pleasure that I am testifying today in favor of the nomination of Donald Hodel as Secretary of Energy by President Ronald Reagan.

It is my hope and the hope of the foundation which I represent that Mr. Hodel will continue to improve on the political, technical and management skills which he has demonstrated in his past positions of responsibility in both Government and the private sector. As Secretary of Energy, he will surely need them.

Today the United States is faced with the greatest crisis in its history. Because of the growing hegemony of antinuclear, antiscience Malthusian societal policies best represented by the Carter administration's Global 2000 report and the Project 1980's of the New York Council on Foreign Relations, the United States and other Western economies are presently plunging into a depression far worse than the 1920's and 1930's.

Under such conditions even the threat of total destruction will not prevent one or both of the superpowers from going to war. The prospects for the United States in this situation have been greatly diminished by the rapid decline of its scientific and military capabilities since the downturn of NASA and other high technology efforts in the late 1960's.

As Secretary of Energy, Mr. Hodel will be uniquely positioned to reverse these dire circumstances. The Department of Energy is charged with the research and development of energy, the key to all other natural resources and the maintenance of U.S. nuclear weapon and technology defense capabilities. Both of these functions depend on maintaining and improving a broader science and technology base and in particular, fusion and plasma physics research.

Because of this, the Secretary of Energy has the primary responsibility for seeing to it that the implications and potentials of these advanced technologies are made known to the U.S. Government and people and fully realized in practice.

In 1977, I testified before the U.S. Senate Appropriations Committee on the rapid progress of Soviet research in fusion and plasma physics. In particular I reviewed the work of Leonid Rudakov and its potential for realizing directed energy weapons capable of destroying nuclear tipped missiles in midflight.

Since that time, the well known political economist and member of the board of directors of the Fusion Energy Foundation, Lyndon H. LaRouche, has detailed in numerous presentations and publications how a crash program to develop high energy beam weapons capable of knocking down hostile ICBM's is the only way to end the age of mutual thermonuclear terror, and that such a policy can create a period of rationality in international relations during which United States-Soviet agreements to cooperate in Third World development and scientific research can create the basis for a lasting peace.

More recently, Dr. Edward Teller has endorsed this same policy outlook. I offer as an appendix to this testimony a transcript of the October 26 National Press Club speech of Dr. Teller.

Would you accept that as an appendix?

The CHAIRMAN. It will be placed in the record.

Mr. STEVENS. In this speech, Dr. Teller alluded to the fact that a whole new family of directed energy weapons has been scientifically demonstrated based on U.S. fusion and plasma physics research but as he stated, Dr. Teller is prevented from informing the U.S. people about this significant development because of existing security classification policies.

Dr. Teller, in calling for the reform of these policies, said,

> * * * not the details but the very ideas are classified. We call it not only secrecy but "security." It isn't because the Soviet leaders know it, the American people have a need to know it but they are not told.

At this point I would like to offer as a second appendix a report on the X-ray laser that I and Dr. Steven Bardwell of the Fusion Energy Foundation had completed recently and also excerpts from the special report we have done on beam weapons that would go into more detail on the feasibility and appropriateness of those systems.

In an article detailing his plea for relaxing U.S. security classification constraints, in the most recent issue of Reason magazine, Dr. Teller refers to the famous Rudakov case.

In 1976, Soviet fusion scientist Leonid Rudakov made a series of presentations while visiting the United States. The U.S. Government classified Dr. Rudakov's talks as top secret. Within a few months of this action, the Fusion Energy Foundation's staff was able to reconstruct the essential contents of Dr. Rudakov's presentations through utilizing articles in the open scientific literature.

Reforming the current U.S. security classification policy is one of the most important and pressing issues facing Mr. Hodel when he becomes Secretary of Energy. Such a change is crucial for immediately giving the U.S. Government and people the essential facts and information needed for determining a competent defense policy and turning around this nuclear freeze movement.

The former speaker noted that there are members of his organization who are for the nuclear freeze movement, Dr. Hans Bethe, for example. We think it is really at this point, if that were to go through, we would not have to worry about energy in the United States because essentially we would be faced with the situation Dr. Teller has detailed in a speech just the other day at the University of Chicago, where we would be faced with the situation of probably going to war.

Immediately mobilizing the U.S. scientific capabilities to fully realize the military and economic applications of these systems also flows from the fact that we need to have the declassification.

Today with the X-ray laser we are in a position to make major scientific breakthroughs in biology, medical, and chemical research, but this cannot go on now because right now the policy is to keep the very ideas of these systems classified.

The greatest irony of the world's current nuclear dilemma is that the perfection of a defense against nuclear weapons not merely would break the balance of nuclear terror but also would begin a process of economic and technological progress sufficient to remove the most deeply rooted causes of war and economic depression today.

The technologies required for the development of a beam weapon for ballistic missile defense are the same required for the development of fusion energy, mankind's ultimate energy source, which has unlimited cheap fuel, little waste and very high energy densities.

As has often happened historically, military research on the most advanced technologies would have a revolutionary impact on civilian, industrial, and energy technologies. Much like the role of the military in the perfection of nuclear energy for propulsion, the development of directed energy weapons will open up a new chapter in man's history, the age of thermonuclear plasma technologies.

These technologies used for energy production, materials processing, propulsion and industry in the form of plasma furnaces and magnetic separation will have a more revolutionary impact on society than the introduction of electricity 100 years ago.

In the more near term, clean and cheap thermonuclear explosives, derived from a crash beam weapon development effort, can find immediate application in a revived peaceful nuclear explosives program. Since 1975 the United States has abandoned research and development along these lines while the Soviet Union has gone ahead full steam.

I would just like to sum up that with Mr. Hodel, I think for the first time we have a very serious Secretary of Energy. He is faced with a tremendous amount of responsibilities and problems to solve at this juncture.

I think this morning the defense side of his responsibilities did not receive the emphasis it should have.

[The prepared statement and additional material submitted by Mr. Stevens follow:]

FUSION
ENERGY
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STATEMENT OF CHARLES B STEVENS, DIRECTOR OF FUSION RESEARCH FOR THE FUSION ENERGY FOUNDATION BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

My name is Charles B. Stevens and I am the director of Fusion Research with the New York City based Fusion Energy Foundation. It is with great pleasure that I am testifying today in favor of the nomination of Donald Hodel as Secretary of Energy by President Ronald Reagan. It is my hope and the hope of the foundation which I represent that Mr. Hodel will continue to improve on the political, technical and management skills which he has demonstrated in his past positions of responsibility in both government and the private sector. As Secretary of Energy he will surely need them.

Today, the United States is faced with the gravest crisis in its history. Because of the growing hegemony of the anti-nuclear, anti-science Malthusian post-industrial societal policies best represented by the Carter Administration's Global 2000 report and the Project 1980s of the New York Council on Foreign Relations, the United States and other Western economies are presently plunging into a depression far worse than that of the 1920s and 30s. Under such conditions, even the threat of total destruction will not prevent one or both of the superpowers from going to war. The prospects for the U.S. in this situation has been greatly diminished by the rapid decline of its scientific and military capabilities since the downturn of NASA and other high technology efforts in the late 1960s.

As Secretary of Energy, Mr. Hodel will be uniquely positioned to reverse these dire circumstances. The Department of Energy is charged with the research and development of energy--the key to all other natural resources--and the maintenance of U.S. nuclear weapon and technology defense capabilities. Both of these functions depend on maintaining and improving a broader science and technology base, and in particular fusion and plasma physics research. Because of this the Secretary of Energy has the primary responsibility for seeing to it that the implications and potentials of these advanced technologies are made known to the U.S. government and people, and fully realized in practice.

In 1977 I testified before the United States Senate on the rapid progress of Soviet research in fusion and plasma physics. In particular I reviewed the work of Leonid Rudakov and its potential for realizing directed energy weapons capable of destroying nuclear tipped missiles in mid-flight. Since that time the well known political economist and member of the board of directors of the Fusion Energy Foundation, Lyndon H. LaRouche has detailed in numerous presentations and publications how a crash program to develop high-energy beam weapons, capable of knocking down hostile ICBMs, is the only way to end the age of mutual thermonuclear terror; and that such a policy can create a "period of rationality" in international relations during which U.S.-Soviet agreements to cooperate in Third World development and scientific research can create the basis for a lasting peace.

More recently, Dr. Edward Teller has endorsed this same policy outlook. I offer as an appendix to this testimony a transcript of the Oct. 26 National Press Club speech of Dr. Teller. In this speech Dr. Teller alluded to the fact that a whole, new family of directed energy weapons has

Publishers of Fusion Magazine, the International Journal of Fusion Energy, and The Young Scientist

been scientifically demonstrated based on U.S. fusion and plasma physics research. But as he stated, Dr. Teller is prevented from informing the U.S. people about these significant developments because of the existing security classification policies. Dr. Teller in calling for reform of these policies said: "not the details, but the very ideas are classified. We call it not only secrecy, but 'security.' It isn't, because the Soviet leaders know; the American people have a need to know. But they are not told."

(At this point I offer as a second appendix a recent report on the x-ray laser prepared by myself and Dr. Steven Bardwell. The x-ray laser is a leading member of the family of directed energy weapons to which Dr. Teller alluded.)

In an article detailing his plea for relaxing U.S. security classification constraints, in the most recent issue of *Reason* magazine, Dr. Teller refers to the famous Rudakov case. In 1976 Soviet fusion scientist Leonid Rudakov made a series of presentations while visiting the United States. The U.S. government classified Dr. Rudakov's talks as top secret. Within a few months of this action, the Fusion Energy Foundation staff was able to reconstruct the essential contents of Dr. Rudakov's presentations through utilizing articles in the open scientific literature.

Reforming the current U.S. security classification policy is one of the most important and pressing issues facing Mr. Hodel when he becomes Secretary of Energy. Such a change is crucial for: 1) immediately giving the U.S. government and people the essential facts and information needed for determining a competent defense policy; 2) immediately mobilizing the U.S. scientific capabilities to fully realize the military and economic applications of these systems.

The greatest irony of the world's current nuclear dilemma is that the perfection of a defense against nuclear weapons not merely would break the balance of nuclear terror, but also would begin a process of economic and technological progress sufficient to remove the most deeply rooted causes of war and economic depression today.

The technologies required for the development of a beam weapon for ballistic missile defense are the same required for the development of fusion energy--mankind's ultimate energy source, which has unlimited, cheap fuel, little wast, and very high energy densities.

As has often happened historically, military research on the most advanced technologies would have a revolutionary impact on civilian industrial and energy technologies. Much like the role of the military in the perfection of nuclear energy for propulsion, the development of directed energy weapons will open up a new chapter in man's history: the age of thermonuclear plasma technologies. These new technologies used for energy production, materials processing, propulsion, and industry in the form of plasma furnaces and magnetic separation will have a more revolutionary impact on society than the introduction of electricity had 100 years ago.

In the more near term, clean and cheap thermonuclear explosives, derived from a crash beam weapon development effort, can find immediate application in a revived Peaceful Nuclear Explosives (PNE) program. Since 1975 the U.S. has abandoned research and development along these lines while the Soviet Union has gone full steam ahead.

Without any limits to the energy and raw materials freed by plasma technologies, the age-old problems of starvation, plague, drought, and inadequate housing and ehalth care can be realistically be scheduled for solution; no material barriers to their solution would remain. There would be no limits to mankind's potential for growth.

Dr. Edward Teller tells press: 'Science can end the age of thermonuclear terror'

Dr. Edward Teller, a nuclear physicist who played a leading role in the Manhattan Project and then went on to participate in the U.S. development of the hydrogen bomb, addressed the National Press Club Oct. 27. Dr. Teller, 74, is a member of President Reagan's Science Council, a senior research fellow at the Hoover Institution, a consultant to the Lawrence Livermore Laboratory, and professor emeritus at the University of California. A full transcript of his speech and extensive selections from the question period follow.

One of the obvious things is, a point that absolutely all of us, those present and those absent, every American, I believe, shares, is our determination not to have another war, another big war like the first and the second world war, or worse. There is no difference of opinion on that point. There is a difference of opinion what is the best way to avoid another war.

Our policies for years have been on the wrong track.

For a quarter of a century we have conceived of our situation as a balance of terror, and the dreadful point is, that the terror is obvious; the balance is not. President Reagan had the honesty and the great courage to state that the Soviets are ahead of us in important military respects, including nuclear weapons. This is obviously not a popular statement. It is obviously not a self-serving statement. And it is obviously a statement about a situation that the American people need to know. But no one except he in high office had the courage to make that statement.

I have talked to many audiences, including students, and I found in general that about 10 percent are for the freeze, about 10 percent are against the freeze, and 80 percent are scared. They have every reason to be. This policy has been introduced by a peculiar man who for seven years was our Secretary of Defense: Robert Strange McNamara. The Mutually Assured Destruction, or MAD policy, is something that I don't see how anybody can like. That people should look for an alternative I fully understand.

But the alternative, the oversimplified proposal of the freeze movement, which has been labeled as simple as a can-opener, will not help us by opening this can of worms. We need, and we can have a much better solution.

No, it is in the nature of development of weaponry that if anything new comes up, and certainly atomic weapons is something very new, the first application as a rule is destructive. And, the defensive uses need very much more sophistication. We have arrived at the point where the ingenuity of several of my young colleagues has produced, to say it very cautiously, proposals for defensive weapons. I, as befits a person advanced in his 70s, was incredulous, but also obviously and greatly interested.

I want to be very clear about this point. I am not talking about one proposal. I am not talking about one magic solution, I am talking about a whole trend. Furthermore, we have good evidence that the Soviets are familiar with the ideas on which we are working.

There remains nothing more for me to do but to tell you what these new ideas are. For that is both difficult and also impossible. It is difficult because of all matter known to man, the one with the greatest inertia is the human brain. To accept, absorb, evaluate a new idea is immensely difficult even in your field. And if it is not in your own field, it becomes almost impossible. And many scientists, many excellent scientists, who looked briefly and in some places with some prejudice, at these new ideas, have rejected them—as I did, when I looked at them the first time. But the more I looked, the more convinced I became. That is why it is difficult. It is impossible, because these ideas—not the details, but the very ideas—are classified. We call it not only secrecy, but "security." It isn't, because the Soviet leaders know; the American people have a need to know. But they are not told.

At the very beginning of the Cold War, the greatest physicist of all, Niels Bohr, said, "In the Cold War it would be reasonable to expect that each side will use the weapons that it can use best. And the appropriate weapon for a dictatorship is secrecy. But the appropriate weapon for a democracy is the weapon of openness."

And "openness" is a weapon. It could bring us and our allies more closely together. It could produce a situation where money counts, but where ideas and their thorough execution, which does not cost very much money—that counts incomparably more. In such a situation, the free democracies, working together, could be irresistible.

From sad experience, I know, and I believe many of you recognize, that the Soviet leaders have an ambition to rule the world as did Hitler. But, there is an enormous difference between the men of the Kremlin and the Nazis. Hitler was an adventurer. The rulers in Moscow are not. When they are faced with an uncertain situation, they will not embark on adventure.

If "freeze" prevails, the consequences are predictable. People talk about bilateral "freeze." How will you check on fabrication, and what's more important, on research, in a vast country, in the Soviet Union? Will you send over 100,000 Americans who can go everywhere, find out anything? Will that be permitted? If that were truly permitted, I believe it would be the end of the police state in the Soviet Union, and for that, I would give anything. But instead, you know what the situation is. That is how bilateral freeze would be.

I also believe that to try to pursue a freeze, without understanding the situation, without evaluating the alternatives of developing defensive weapons which would act on both sides for stability and peace—we cannot evaluate this without at least discussing the ideas I refer to.

One example: we have a great amount of valuable, relevant material about Soviet civil defenses. A trickle has been published. Why not all? The Soviets know it, they know what civil defense measures they have taken. They know how we know it. They know we get it from refugees. Why not make a beginning with a law which forbids the classification of anything pertaining to civil defense? What should be kept secret in a difficult time and what should not, cannot be judged in a few words and in an oversimplified manner. But that the American people should not know what the Soviet leaders know, and what they need to judge, decisions in some other simple cases, these can be decided.

Ladies and gentlemen, I lived through two world wars. In the first, I was a child, but I knew what was happening. 15 million people were killed in the country of my birth, and it was torn apart. I remember the days before the second world war when the small Chamberlain, not the one who is more than 7 feet tall, went to Munich with his umbrella, and brought home "peace in our time." That peace lasted for one year. And was followed by the killing of more than 15 million people, and the murder of most of my close friends in Hungary, and many of my close relatives. I use the word murder deliberately. This could have been avoided, except for the well-intentioned folly of Chamberlain. This well-intentioned folly may be now repeated by the advocates of the freeze movement.

We must find an alternative, and we must not be led by the simple slogans which are apt to increase the danger of war.

Ladies and gentlemen, this is why I am against the freeze movement, and why I conceive of this issue as probably the most important in this year. Thank you very much.

Questions by the press

Q: How sure are you the Soviet leaders already know our secrets. How do you know that?

Teller: That is a secret! But part of my knowledge comes from little things like published Soviet literature. I don't know how to draw the line between the obvious, what one can obviously talk about, and the subjects which have been classified secretly, because it has even occurred that the obvious has been classified as secret.

Q: How did the Soviets learn what the American people cannot learn?

Teller: They are not stupid!

Q: In the 1960s you spoke against the limited test ban treaty on the grounds that a new absolutely clean weapon would soon be developed that would eliminate the hazards of radiation in atmospheric testing. That never happened. Why should we believe you this time that we have defensive weapons to ensure stability and peace?

Teller: The questioner is slightly misinformed. I have never claimed that absolutely clean weapons will be developed. I only claimed that weapons can be developed which are clean enough so that their testing will not cause a contamination of the atmosphere which is even approaching anywhere near what we get from natural sources in any case. And this has happened. We know how to make such clean explosives. And I think their testing in the atmosphere should not have been ruled out. One of the consequences of that limited test ban which drove testing under ground, is this: Before the test ban the debris of Soviet tests went into the atmosphere. We could collect it and learn something about what the Soviets are doing. Today we cannot do so. We have no idea what the Soviets actually are doing with their tests, but they have an excellent idea what we are doing, because as Niels Bohr has said, a democracy is just not good at keeping secrets. And if we really would try to keep these secrets, not only imposing it on the people who are reliable but trying to impose it on people like, oh I don't know, like somebody who will sell it to the *New York Times*—I forget his name—that kind of secrecy does not work. And as far as whether you should believe it, the example quoted I don't think proves the question at issue, and may in turn quote a really great man who said once about himself: "I was not always wrong." That was Winston Churchill.

Q: What kind of defensive weapons are feasible and could provide for stability, as you mentioned? ABM? Space weapons?
Teller: I told you that the kinds that we are working on is classified. If I would now begin to give you a list of all the kinds that won't work, somebody could accuse me of having broken the law. I am not going to break the law. Because without law, we could not live in a decent cooperative society. But in this country, though not in the Soviet Union, you can criticize a wrong law, and if the law is, you can change it. And I don't see any group that could better look into the question how openness can be stimulated than the press.

Q: Do you believe there will be war between the Soviet Union and the U.S. by 1990?
Teller: If the freeze people prevail, and if we don't submit to Soviet dictates, then such a war will become likely. If we behave more reasonably, and the first step should be the rejection of the freeze initiative, then I think under the leadership of the present administration, we still have a very good chance to postpone any confrontation, and to create a situation where more and more postponement is possible—where we can do much more than avoid war.

By cooperation with those who are willing fully to cooperate, we can improve the very horrible way of life in the Third World. We can by using technology create a situation where the reasons for war will diminish and keep diminishing. If our allies and we cooperate both in making a stronger defense, and bringing about the origin of real peace, the pursuit of the common aims of mankind, at least in the free part of the world, then in the end even in the Soviet Union where tyranny was endemic—and I here include czarist Russia for centuries—even in that part of the world that in its history has never experienced anything like freedom, even there I think a change of thinking may occur. . . .

I am not telling you that if we can avoid war now, and I think we can, then the golden age will be here. We will have many other problems, and perhaps even greater ones. But I want to have for my children and my grandchildren the chance to confront these new problems, to struggle with them, and to do it as individuals.

Q: You oppose the freeze. You opposed SALT II, you opposed the limited test ban treaty. Are there any arms control agreements you favor? What are they?
Teller: . . . the real measures which I favor are not treaties which start by the word "don't," I am in favor of treaties which start with the word "do," which encourage cooperation and which attack not the means of warfare, but the roots of conflict.

EIR Special Report
EXECUTIVE INTELLIGENCE REVIEW July 1982

Beam Weapons: The Science to Prevent Nuclear War

Prepared by

Dr. Steven Bardwell

Fusion Energy Foundation

Introduction

The Present Strategic Situation

For the past 25 years, humanity has been held hostage to the threat of nuclear war. The strategic military policy of the United States—a policy called mutually assured destruction, or MAD—has been based on the premise that nuclear war can be prevented only if each nuclear power arrays its forces in such a way that the consequence of nuclear war is the complete destruction of both sides.

Yet, the Soviet Union has followed a policy of rapid technological development, premised on the conviction that a nuclear war might occur and that such a war, as destructive as it might be, can be won if the proper defensive measures are taken.

Underlying this asymmetry in strategic thinking are three fundamental facts:

(1) The existence in large numbers of nuclear weapons with such large destructive power that one explosion is sufficient to destroy any single military or civilian target (a city, for example).

(2) The development of intercontinental ballistic missiles (ICBMs) that allow many nuclear weapons to be delivered at distances of more than 7,000 miles, aimed at their targets with an accuracy of less than 1 mile. Thus, there is no objective that cannot be destroyed within approximately 30 minutes, the flight time of a nuclear-armed ballistic missile.

(3) There is no technology in the United States today capable of preventing a ballistic missile from reaching its target once that missile has been launched.

The result of the conjunction of these three facts is a military situation without precedent in modern times: An offensive weapon exists (nuclear-armed ICBMs) of incredible destructive power for which one of the major powers conceives no defense possible. Such a situation is inherently unstable and pushes the United States toward the consideration of a nuclear first strike, on the one hand, and toward utopian fantasies of "limited nuclear war" on the other. Long-term peace in the face of such a military situation is almost impossible.

The instability characteristic of an offensive weapon against which we have prepared no defense is compounded many times over by the development of nuclear weapons capability by states other than the United States and the Soviet Union, notably Israel, Pakistan, and South Africa. The question of deterrence against nuclear war can no longer be decided on the basis of superpower relations, but must include the consideration of small, unstable states acquiring not only nuclear weapons but also ballistic missiles for their delivery.

As the Soviet Union has recognized, but the mainstream of U.S. policymakers has not, scientific and technological developments have occurred in the past several years that promise an end to this threat of uncontrollable holocaust. Scientific and engineering data, available up until now only in highly technical publications or obscured under the cover of military classification, show that a weapon can be built capable of finding, tracking, and destroying nuclear armed ballistic missiles in flight. This research and its implications are the subject of this white paper.

The importance of such a ballistic missile defense system can hardly be overstated: Commenting on one component of this system, Edward Teller called it the most important military development since the atomic bomb; and military professionals concur.

The political economist Lyndon H. LaRouche, Jr., in his book on U.S. military policy, put it this way:

> There is no solution to continued balance of thermonuclear terror which is not premised on the ability of at least one of the superpowers to destroy a proverbial "ninety-nine and forty-four one-hundredths percent" of the incoming and thermonuclear armed aircraft deployed against its national homeland.
>
> We go further. We propose that the adoption of such a high-technology answer to the thermonuclear balance of terror become the central reference point for a comprehensive reform of United States military doctrine and organization of the Defense Department.[1]

Such a reform would include a comprehensive nuclear defense policy with both "conventional" ballistic missile defense systems and beam weapon systems. The conventional technologies, taking advantage of spectacular advances in guidance and propulsion technologies over the past five years, can be used to build an "antimissile missile." According to authoritative studies, such a system of both low altitude missiles and higher altitude interception techniques, could be deployed within five years, with substantial protection available within as little as three years.[2] These systems by themselves are not sufficient, but as part of a comprehensive defensive strategy, they acquire a significance and effectiveness that alone they lack.

A Complete Defense

The keystone of effective ballistic missile defense is the development of a beam weapon. As little as three years ago, even the phrase "directed energy beam weapon" was classified, and yet this family of technologies is the centerpiece of ballistic missile defense. There are four branches of this family of defensive weapons:

(1) *Laser antimissile systems.* Using intense, highly focused light energy produced by a laser, this beam weapon would use its ability to project large energies at the speed of light to burn through an incoming ballistic missile. Laser weapons stationed both in space and on the earth have been studied for application to the destruction of ICBMs. Lasers such as those proposed for antiballistic missile systems have been used by both the United States and the Soviet Union to destroy airplanes and helicopters in flight, and, according to authoritative sources, the Soviet Union has downed a ballistic missile with such a laser.[3] The United States does not even plan such a test for another 18 months.

(2) *Particle beam antimissile systems.* In this version of a beam weapon, a high energy stream of atomic or subatomic particles is used to create a shock wave that destroys the target. These particles, traveling near the speed of light, cause intense mechanical stresses and pulses of radiation that can disable a ballistic missile. Such devices have been tested at Soviet weapons laboratories on a weapons scale;[4] the United States does not plan such tests for several years.

(3) *Electromagnetic wave beam weapons.* These weapons use intense beams of microwaves or radio waves to destroy their target. The intense heating and electrical fields caused by the intense radiation are known to be effective means for disabling the delicate electronics on a ballistic missile as well as for disabling the satellites used to guide and target the ICBMs. The Soviet Union is recognized to be many years ahead of the United States in the experimental development of intense, directed microwave sources.[5] The extent of the Soviet deployment of these microwaves is not publicly known.

(4) *Plasma beam weapons.* It has been known for many years that discrete pulses of highly ionized gas (plasmas) could be generated and accelerated. In a phenomenon closely resembling ball lightning, a self-contained structure of magnetic fields and charged particles can travel long

distances with large amounts of energy stored in the plasma-field structure. Studies show that the energy equivalent of 5 pounds of dynamite (10 megajoules) could be stored in a plasma ball about ½ inch across, traveling at velocities in excess of 1,000 miles per second. This energy, in the highly concentrated form of a plasma-field configuration, would completely destroy an ICBM. The Soviet Union has been conducting active research on this phenomenon since at least the middle 1950s and has recently experimented with large-scale plasma acceleration in the atmosphere.[6]

Combining these components in the U.S. military posture would, for the first time in 25 years, remove in an actual and practical sense the threat of nuclear incineration. We would no longer have to rely on the good will or rationality of all the world's nuclear powers for our defense. We would no longer be hostage to the threat of intercontinental nuclear war.

The greatest irony of the world's nuclear dilemma is that the perfection of a defense against nuclear weapons not merely would break the balance of nuclear terror, but also would begin a process of economic and technological progress sufficient to remove the most deeply rooted causes of war today.

The technologies required for the development of a beam weapon for ballistic missile defense are the same required for the development of controlled thermonuclear fusion energy—mankind's ultimate energy source, which has unlimited, cheap fuel, little waste, and very high energy densities. The ability to control high temperature plasmas, to generate intense magnetic fields, to master pulsed power sources, to generate intense laser beams, to understand the generation and propagation of shock waves, and to guide high density particle beams are the same capabilities required to solve the chief problems that arise in the various forms of controlled fusion research for energy production.

A Revolution in Science and Technology

As has often happened historically, military research on the most advanced technologies would have a revolutionary impact on civilian industrial and energy technologies. Much like the role of the military in the perfection of nuclear energy for propulsion—which resulted in a nuclear reactor safe and reliable enough for civilian electricity production—the development of a beam weapon will open up a new chapter in man's history: the age of plasma technologies. These new technologies used for energy production (fusion), materials processing (plasma torches), propulsion (fusion rockets), and industry (plasma furnaces and magnetic separation) will have a more revolutionary impact on society than the introduction of electricity had 100 years ago.

Without any practical limits to the energy and raw materials freed by plasma technologies, the age-old problems of starvation, plague, drought, and inadequate housing and health care can realistically be scheduled for solution; no *material* barriers to their solution would remain. There would be no limits to mankind's potential for growth.

The real source of the revolutionary impact of these technologies is the scientific challenge they present. The development of a beam weapon would require the resolution of the most profound problems of theoretical physics of the past several centuries. At the present time, all productive scientific research, whether in the United States or the Soviet Union, is based upon a method and set of fundamental breakthroughs of the Riemannian school of mathematical physics. This tradition, largely unconscious and misunderstood in the West, must be resurrected and elaborated if the physics of high energy density systems is to be mastered. The brute force computational techniques that dominate U.S. physical science today reflect the theoretical vacuum left by the virtual disappearance of the Riemannian tradition in the West. This theoretical deficiency appears in several forms (although usually misidentified): the apparent superiority of analytic and conceptual tools among Soviet scientists; the dependence on numerical calculation among Western scientists; the insistence on atomic or particle-based theoretical axioms in the West; the lack of fundamental developments in any field of continuum mechanics.

In the Soviet Union the Riemannian tradition is much stronger and applied much more systematically to the problems of high energy density systems, especially in the areas of plasma and beam physics. Through a line stretching back to the St. Petersburg Academy set up by Leibniz, Russian scientists have concentrated on the hydrodynamic methods necessary for a competent treatment of shock wave phenomena, continuum mechanics, and plasma physics.

The Newtonian opposition to this Riemannian method is the basis for opposition to beam weapon development. In both scientific and policy terms, the British empiricist school now dominates Western science and is almost uniformly opposed to the development of beam weapons and plasma technologies.

The apparent success of the Soviet Union in the application of the Riemannian method poses the scientific problem in stark terms: Either the United States must commit itself to the scientific and technological revolution implied by the development of a directed energy beam weapon for ballistic missile defense, or it must face an adversary prepared for nuclear war, having armed itself with too few of the wrong kind of weapons, for a war that will be fought on the adversary's terms.

The CHAIRMAN. Thank you very much.

Ms. Kokinda.

STATEMENT OF SUSAN KOKINDA, WASHINGTON REPRESENTATIVE, NATIONAL DEMOCRATIC POLICY COMMITTEE, WASHINGTON, D.C.

Ms. KOKINDA. Thank you, Mr. Chairman.

The National Democratic Policy Committee which is composed at this point of about 20,000 members and 400 chapters in most of the States of the United States, including Idaho, was founded 2 years ago because it was our perception that the vast majority of members of the Democratic Party and indeed many in the Republican Party felt disenfranchised with regard to the increasing policy lock that the zero growth crowd has had, both the leadership of the Democratic Party and to a certain degree, the Republican Party, and in many of the institutions of the United States.

Since especially 1967, with the Club of Rome's founding and the propagation of the "Limits to Growth" nonsense, more and more U.S. policymaking has come under the sway of the ideology of people who are essentially committed Malthusians, people who feel there is no way to develop ourselves out of the various resource crises facing us at any particular point.

This was one of the reasons the NDPC was founded and we found a very strong reverberation among many Americans for the kind of policies which we are propagating.

This is also one of the reasons for our very firm and very happy support for the nomination of Don Hodel.

I have testified on a number of occasions here in the Senate in a number of confirmation hearings and I must say this is one of the ones in which I feel the most personal pleasure in doing so.

Don Hodel, what is important I believe about Don Hodel and what is likely to make him an extraordinary Secretary of Energy is that Don Hodel is willing to look into the implications and the deeper questions behind much of the rhetoric and much of the so-called policy discussions thrown up.

Don Hodel knows what the Club of Rome is. Don Hodel knows what a Malthusian is. More importantly, Don Hodel knows what the implications of these policies actually are.

There was some reference this morning to the fact that he had polarized the debate when he was head of Bonneville Power and that this in some way was unfortunate and bad. Certain debates I believe need to be polarized.

One of the reasons I think Don Hodel is perhaps an uncomfortable person for the environmentalists to have around is that he has and I hope will continue to talk about the implications of the failure to go nuclear, the implications of the failure to move forward with advanced technologies.

He referenced this morning in his statement that energy decisions that we make in the advance sector may have a ripple effect on our economy and on our society but they have a devastating consequence for the developing sector. I think that was one of the most important statements that was made this morning. I think it is perhaps the reason that the epithet "polarized" has been thrown into this question.

Our friends in the Fusion Energy Foundation have done a study released several months ago which actually weighed the consequences in human lives in the developing sector of the slowdown in the development of nuclear energy in the United States. You can measure those lives from the standpoint of lower growth rates in those countries, higher energy prices and the impact that has on the very fragile economy of these countries. You can measure that in the order of hundreds of millions of people over the past decade and over the coming decade.

They estimated that in the past 15 years, we are talking on the order of 115 million people in the developing sector who unnecessarily died because of the failure to move ahead with nuclear energy.

I think it is fair to say that Don Hodel knows that. Some of his polarizing debate has been precisely to that end. That can be a very uncomfortable thing to say. A lot of people may not want to hear it. I think it is time that people were faced with the responsibility for the consequences of the policies which they are putting forward. I would suggest that is perhaps the underlying or the real reason for some of the opposition to Don Hodel at this point. It is not because he was head of Bonneville Power per se and did this or that or he was Jim Watt's No. 2 man in carrying out directives appropriately or that he is for nuclear energy. It is because he is willing to talk about the deeper implications and I hope he continues to talk about the deeper implications of energy policy in the United States and the impact on the world.

Another major topic of discussion in the hearings this morning was this question of a balanced approach to energy. I hope to be a little polarizing on this score as well.

I do not think we need a balanced approach to energy. I think if you are actually defining the quality of energy necessary to keep this country or to get this country out of the depression and more importantly, to industrialize the developing sector, to insure that we are not facing more deaths over the coming decades because of zero growth and indeed negative growth in this country, we have a very narrow path to follow in terms of the quality of the energy production we are talking about.

The thing to look at is the question of net energy output, what are you getting out compared to what you put in? Solar energy is not free. You have to count all the energy that goes into the steel, the manpower, the glass, the tinfoil or whatever it is to create a solar collector. You are not going to ever get any net energy output from solar.

You are looking at real energy efficiency. You have to look at such technologies as conventional nuclear and clearly as rapidly as possibly, thermonuclear fusion. That is a debate that I think has got to be forced in the Reagan administration. I hope Don Hodel is one of the kind of people who can help force that as we hopefully stir up a little noise in the country.

One aspect which historically has forced these kind of issues into the aspect that my colleague referenced in terms of the military strategic question, just as the Manhattan Project, just as Admiral Rickover's nuclear program in the Navy actually had important ramifications for bringing this debate into the civilian and economics sphere, so is the immediate military strategic question of the absolute necessity of developing directed energy beam, ABM capabilities in space.

We wholeheartedly concur with Edward Teller's current campaign to force this issue as much as he is able into the public domain and to make this the issue of strategic debate that should be hitting the administration at this point.

We hope that we can force the question of technology versus Malthus, if you will, of zero growth versus technological advance, around the issue of the military strategic question embodied in this absolutely necessary strategic step forward, of giving us an assured defense.

Our response to the nuclear-freeze movement is very simple. Why freeze weapons when you can destroy them. That is the purpose of pushing for a space-based beam weapon approach on the strategic side. Again I stress and this has immediate ramifications in terms of the responsibilities of the Secretary of Energy, the kinds of advanced plasma technologies that will of necessity go into these kinds of defense systems are precisely those that are on the frontiers of science and which bring with them the greatest possibility for productivity surges into the U.S. economy.

At this point, a balanced energy approach with a little bit of this and a little bit of that, none of it being terribly efficient at this stage of the game, is not going to fit the bill in terms of what this economy and what this world needs to get out of the state of decay of our plants and equipment and our work force that we actually need at this point.

We hope to force this debate in the context of a call for these directed beam weapon systems as a space-based ABM system in the context of a larger program, which also includes a massive upgrading of our civilian space program toward the end of colonizing the Moon and Mars over the coming decades and including the cooperation with the Soviets if necessary and without them also if necessary, in the rapid realization of controlled thermonuclear fusion as really the energy source to end this whole question of limited resources and to embark on joint projects to industrialize the Third World.

That kind of an approach and only that kind of an approach I would submit is what is going to get us out of the current fix that we are in right now and the much more devastating implications of this economic crisis in the developing sector at this point.

I would submit that really has to be the mandate for the Department of Energy. I think Don Hodel is uniquely the kind of individual who could carry the mantle of that mandate and indeed, I think his talents will be wasted if any other approach is taken by this current Administration.

I would just like to conclude again with our very deep felt endorsement of Don Hodel as Secretary of Energy and also ask if I might also submit a few things for the record which elaborate on these policies.

[The prepared statement and additional material submitted by Ms. Kokinda follow:]

News from the National Democratic Policy Committee

Advisory Council Chairman
Lyndon H. LaRouche, Jr.

Chairman
Warren Hamerman

Testimony of Susan Kokinda
for the National Democratic Policy Committee
Senate Energy and Natural Resources Committee
Nomination of Donald T. Hodel as Secretary of Energy
December 1, 1982

Thank you, Mr. Chairman. I appreciate the opportunity you have given us to present our reasons for endorsing the appointment of Donald T. Hodel as Secretary of Energy. Established in the fall of 1980 by individuals associated with Lyndon H. LaRouche, Jr., the National Democratic Policy Committee is a multi-candidate political action committee composed of 20,000 members organized in over 400 chapters around the country. A fundamental reason for the creation of the NDPC was the recognition that large numbers of members of the Democratic Party (and of the Republican Party) felt disenfranchised with regard to their ability to affect economic, strategic and energy policies from the standpoint of an aggressive pro-growth orientation.

For the past 15 years there has existed in this country, with increasing intensity, a "neo-Malthusian" or no-growth lock on policy making, eminating from such international command centers as the Club of Rome (which authored the "Limits to Growth" tract), the Committee for the Year 2000 (created to implement the Global 2000 report), and the World Wildlife Fund. To the extent that the farmer, labor and small business base of the Democratic Party, and equivalent elements of the Republican Party, have been technologically progressive and culturally optimistic in their world outlook, they have been increasingly frustrated in their ability to actualize that outlook through existing institutions.

It is for that reason that the NDPC was founded, and it is from that standpoint that we welcome the nomination of Don Hodel. However, it is not sufficient to merely be "pro-growth" in some undifferentiated fashion. It is vitally necessary that one understand the science of economics and technology which can assure growth; and, conversely, to understand the ideology and assumptions upon which the Malthusians operate. What is important and refreshing about Secretary Hodel is not merely that he had a successful tenure as head of Bonneville Power, or that he is pro-nuclear, but that he has been willing to challenge environmentalists to head on debate on the implications of their policies. He knows the devastating consequences, in terms of human misery, of the failure to develop nuclear energy and other advanced, "hard" forms of energy. He knows who and what the Club of Rome is, and what its policies have done and will continue to do to this nation and to the developing sector.

That, I would submit, is the underlying reason for the environmentalist opposition to Don Hodel. It is not to be found in the fact that he carried out Interior Secretary Jim Watt's policies, or that he is a proponent of nuclear energy, or highhead hydro, per se. It is because he has, in the past, and will continue, we hope, in the future, explain the consequences of Club of Rome-directed policies. While, in a more appropriate forum, we could detail how the environmentalist movement (and before that the "conservation movement" of previous decades) was created and deployed by an international financial grouping identified with certain oligarchical families, for an explicitly neo-feudal or neo-Malthusian purpose, it is not our purpose to question the sincerity of those who may testify in opposition to Secretary Hodel. We merely wish to inject a little "truth in advertising" to the proceedings.

In a study released by the Fusion Energy Foundation several months ago, it was reported that the obstruction of nuclear energy development has meant the death

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Authorized and Paid for by the National Democratic Policy Committee

of over 100 million people over the past 15 years, calculated by examining the impact of lower growth rates and higher energy prices on the fragile economies of the Third World. The soft energy path demanded by the Club of Rome and its environmentalist minions means that the globe can support several billions fewer people by the year 2000 than current demographic figures project. This is a function of the NET energy output of soft energy forms, as opposed to the NET energy output of advanced technologies such as conventional fission, and ultimately, fusion. Nowhere in the wildest dreams of the population controllers do they project that this 2 billion person reduction can be accomplished through even the most aggressive birth control methods. That reduction can only come about by increasing the death rate. As the FEF study shows, the failure to provide for adequate and efficient energy production, in the form of conventional nuclear, is already contributing massively to that increase in the death rate.

In the post-war period, a legal concept was advanced that stated that an individual was responsible for his actions if he had known or should have known of the consequences of those actions. To the extent that Secretary Hodel understands what I mean, that makes him a very uncomfortable person to have around if one is a well-off, well-fed solar advocate blithely calling for policies whose impact will be to kill millions of people below the Tropic of Cancer.

The other function of our support for Mr. Hodel falls more in the category of what we hope his response will be to the national campaign which we and the FEF have launched for the development and deployment of an ABM capability based on space-based beam weapons. As one of the members of the Cabinet with substantial jurisdction over critical aspects of our proposal, we look to Secretary Hodel for support in this effort.

It is the assessment of NDPC Advisory Chairman, Lyndon LaRouche, that the best means of breaking the Malthusian stranglehold on U.S. and international policy-making, lies with the perceived need for carrying out scientific and technological breakthroughs related to military and strategic capabilities. The development and deployment of these space-based defensive weapons, which can disable incoming ICBM's before they reenter the earth's atmosphere, is contingent upon the application of frontier areas of plasma physics. It provides exactly the kind of "science driver" undertaking in the tradition of the Manhattan and Apollo Projects that has the capability to generate "economic shockwaves" into the economy. Unlike the conventional and off-the-shelf military technologies currently under debate, a concentration of a massive Manhattan Project investment into defensive beam technologies on the frontiers of science, if allowed to spill over into the civilian economy as during NASA, will actually increase overall productivity at no net social cost, despite a seemingly high initial dollar outlay. This is historically the way military-related technological advances create economic shock waves.

The emphasis on civilian spinoff is crucial for such a defense program to have the economic benefits described. As such, our beam weapon proposal is couched in the context of a program for a "higher peace movement" based on the following proposed approach to the Soviet Union:

*coordinated deployment of beam weapons, to free the world from the dangerous dead-end of "mutually assured destruction;"

*joint cooperation in the exploration and colonization of the Moon and Mars;

*cooperation in the rapid realization of controlled thermonuclear fusion as an energy source; and

*joint projects to industrialize the Third World.

As Edward Teller recently emphasized in a speech urging the development of such high energy weapons systems, we must apply advanced technology to the "common benefit of mankind."

The strategic implications of our proposal revolve around precisely the same "Malthus vs. technology" parameters which we have established. The nuclear freeze movement, as some of its more prominent spokesmen such as Robert McNamara and McGeorge Bundy elaborate, is simply a rationale for cutting back on strategic capabilities so as to build up conventional capabilities in order to wage Malthusian population and resource wars in the developing sector. The freeze movement is not interested in ending the reign of thermonuclear terror with an "assured defense" strategy. They would maintain the concept of deterrence, or mutually assured destruction, rather than see the U.S. and the Soviet Union go into a "technological breakout mode" around the deployment of beam weapons. As LaRouche said in a recent speech in Munich, "Beam weapons are not a final answer, but they are crucial because they can give us a period of rationality in military terms, during which we can solve the problems which ultimately are the root causes of war."

And ultimately those root causes of war are the Malthusian economic and energy policies which have devastated the developing sector, weakened the U.S., and pose the greatest danger of destabilization and miscalculation. We look to Secretary Hodel to contribute the necessary leadership in those areas of energy policy which bear on this issue of national survival and international stability.

Draft legislation for a U.S. beam program

The National Democratic Policy Committee (NDPC) will be circulating the following draft legislation among Congressmen and Senators in the special session of Congress that opens Nov. 29. The bill was drafted by the Fusion Energy Foundation.

The NDPC, whose advisory committee is chaired by EIR founder Lyndon LaRouche, plans a vigorous lobbying campaign in Washington, D.C., and around the country to gain both popular support and congressional sponsors for the introduction of the bill in the next session of Congress.

The Directed Energy Beam Ballistic Missile Defense Research, Development, and Demonstration Act of 1983

A bill to provide for an accelerated program of research, development, and demonstration of directed energy beam weapons to protect the United States from thermonuclear attack within a decade, to be carried out by the Department of Defense.

Section 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Directed Energy Beam Ballistic Missile Defense Research, Development, and Demonstration Act of 1983."

Section 2. (a) The Congress hereby finds that:

(1) the world's military balance has been determined for the past 25 years by the existence of an offensive weapon of mass destruction, the nuclear-armed intercontinental ballistic missile, for which there is no defense;

(2) the world's population has been held hostage for 30 years in a purposeful policy of assured vulnerability, in the name of deterrence of the use of these weapons;

(3) the United States has had no protection from the holocaust that would result from the explosion of even a single hydrogen weapon on any city;

(4) there has been no recourse in this period should even an accidental launching of a nuclear-armed ballistic missile occur, an event that could destroy as many as 15 cities in the United States;

(5) the past three years have brought a series of technological successes whose cumulative import is that it is now possible to begin constructing a means of destroying a limited number of nuclear-armed ballistic missiles in mid-flight, after launch, but before their warheads have been released;

(6) these technological advances using directed energy-beam weapons are inherently defensive capabilities and will form the basis of the national security of the United States in the next decades;

(7) directed energy-beam weapons refer to the use of laser, particle, and other forms of coherent high-energy sources to disarm offensive nuclear weapons systems;

(8) expert opinion indicates that the technologies exist to begin construction of such directed energy-beam weapons which, in the next five years, would be capable of destroying any missiles launched accidentally by any Nation and that these technologies could be perfected in the next decade to provide a large margin of protection in the event of a large-scale or total nuclear attack;

(9) according to published reports by the Defense Department and the United States General Accounting Office, the Soviet Union is currently spending at least three times as much money as the United States in the development of defensive beam-weapons systems, and the program in the United States has been only a research effort and not a development effort; the consequences of this imbalance thus threaten U.S. national security;

(10) the technology of beam weapons has been provided largely by similar research on nuclear fusion;

(11) these same directed energy-beam weapon technologies, when applied in the civilian sector, would accelerate the development of thermonuclear fusion power, which is an unlimited source of energy, as well as a full array of plasma technologies and civilian space applications;

(12) the stimulation of all nuclear and related energy technologies from the directed energy-beam research would be the basis of a renewed "Atoms for Peace" program for nuclear exports, and would ensure international economic development, which would decrease the possibility of war; and

(13) the programs established by this Act will require the expenditure of approximately $10 billion during the next 10 years.

Section 2. (b) It is therefore declared to be the policy of the United States and the purpose of this Act to establish an aggressive research, development, and demonstration program involving directed energy-beam weapons systems. Further, it is declared to be the policy of the United States and the purpose of this Act that the objectives of this program are:

(1) to propose immediately with the work necessary to deploy a high-energy laser system within the next five years that could provide a defensive capability against a small number of nuclear-armed intercontinental ballistic missiles;

(2) to accelerate research and development of short-wavelength laser and particle-beam programs with the goal of determining the optimum research and development path for succeeding generations of beam weapons designed to provide complete protection of the United States against nuclear war, and of putting this system in place within a decade;

(3) to take appropriate measures, modeled on the National Defense Education Act as originally adopted, to ensure the provision of adequate scientific and engineering manpower for the development of these weapons systems and the civilian energy and space technologies that will emerge from applications of this research and development;

(4) to take the necessary steps to ensure the fullest participation of the private sector, colleges, and universities; other government agencies; and allied Nations in the directed energy-beam weapon development program, recognizing that defensive technologies do not pose a threat to the national security of the United States and that these technologies will not be classified, except as they overlap offensive weapons technologies; and

(5) to consider these technologies, therefore, unclassified until reviewed by a panel including the Department of Defense, the Department of Energy, and the National Aeronautics and Space Administration, which, at its discretion, may restrict access.

Section 3. The Secretary of the Department of Defense is directed:

(1) to conduct a review jointly with the Department of Energy and National Aeronautics and Space Administration, of the directed energy-beam weapon program and provide, within one year, a program for the most rapid development of this technology, based on the readiness of the technology, rather than budgetary considerations;

(2) to conduct an in-depth review of military strategy to replace the doctrine of Mutually Assured Destruction (MAD) and all aspects of "deterrence" doctrine;

(3) to provide the Department of State with the necessary information and guidance to design a renewed "Atoms for Peace" program based on the export of advanced fission and fusion technologies for peaceful uses;

(4) to provide the Arms Control and Disarmament Agency with the necessary information and guidance to prepare a new proposal to the government of the Soviet Union for negotiation of a mutual agreement for the development of defensive weapons by both Nations that would ensure that no third power would ever use the weapon of nuclear blackmail;

(5) to work with the Department of Energy and the National Aeronautics and Space Administration to ensure the transfer of technology in all applicable areas to the civilian sector; and

(6) to work with the Department of Energy to ensure optimal progress in inertial and magnetic nuclear fusion programs.

Section 4. There is hereby authorized to be appropriated to the Secretary, for the fiscal year ending September 30, 1984, $300 million inclusive of any funds otherwise authorized to the Secretary for the purpose of research, development, and demonstration of directed energy-beam weapons for ballistic missile defense, and for each succeeding fiscal year such sums as may hereafter be provided in annual authorization acts.

FROM NATIONAL DEMOCRATIC POLICY COMMITTE
STATEMENT
"ONLY BEAM WEAPONS COULD BRING
AN END TO THE REIGN OF
THERMONUCLEAR TERROR'
BY LYNDON H. LAROUCHE, JR.
ADVISORY COUNCIL CHAIRMAN, NDPC
MARCH, 1982

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2. A Short History of Beam-Weapons Technology

Public discussion of anti-missile beam-weapons technology began during mid-1977, as an outgrowth of discussions between physics-trained Major-General George Keegan and nuclear physicist Dr. Steven Bardwell of the Fusion Energy Foundation.

In his earlier duties as chief of Air Force Intelligence, General Keegan had detected what he believed to be Soviet development of a new kind of weapons capability. During preceding years, especially since the founding of the Fusion Energy Foundation in 1974, those of us associated with the FEF had performed a public role in promoting Riemannian relativistic physics, and had publicized informed estimates of Soviet breakthroughs in relevant aspects of relativistic plasma-physics. General Keegan discussed his problem of assessment of Soviet capabilities with Dr. Bardwell on this basis.

Afterwards, also during 1977, present NDPC Advisory Committee Chairman LaRouche ordered a public campaign for U.S. development of relativistic plasma-beam anti-missile weapon systems. During the same period, General Keegan made a parallel effort independently of the FEF and NSIPS campaigns.

Although General Keegan's views on this subject are largely shared by Britain's Vice Air Marshal Stewart Menaul, the London International Institute for Strategic Studies (IISS) immediately launched an international campaign of vilification against General Keegan, FEF and LaRouche on this issue. Some West German military circles reported themselves dazed by the ferocity of the attempted "brainwashing" to which they were subjected by IISS on this account.

There were two principal reasons for continued strong opposition to beam-weapons development from IISS and other quarters since 1977.

Primarily, IISS represents circles committed politically to a global "post-industrial society" perspective and a zero-technological-growth perspective. Whatever IISS might have estimated to be the objective military merits of beam-weapons, beam-weapons implied both an escalation of NASA programs and also a NASA-like crash-program in areas subsuming fusion-energy research and development. To adopt a policy of developing beam-weapons would mean an automatic end to the drift of the West toward the utopian goals of a "technetronic" variety of "post-industrial society."

Secondly, the variety of theoretical physics applicable to beam-weapons development is *Riemannian physics,* as opposed to the Newton-Maxwell varieties and their offshoots. Even most professional scientists of today are admittedly ignorant of the continuing, embittered conflict between the two schools of science up through and immediately following World War II. Most British, American, and, other contemporary generations of physics professionals, and most emphatically, contemporary mathematicians, are simply indoctrinated in the Newton-Maxwell empiricist school.

The mere existence of relativistic plasma-beams has devastating implications for the authority of the empiricist faction's school as a whole.

The lawful phenomena manifest in the generation of "shock" effects by such plasma-beams are a confirmation of a law of physics proven by a crucial experiment designed by Bernhard Riemann in 1859. This experiment, which focused on the operation of such universal laws in the case of generation of acoustical shock-waves, was the theoretical basis for an entire school of fluid dynamics, including aerodynamics, which arose in Germany and Italy under the direct influence of Riemann's work.

As recently as the 1890s, Rayleigh staked the credibility of the entire British school of physics on the assertion that Riemannian shock-waves are not generated in acoustical media. During the 1890s through the 1920s, Bertrand Russell's career within science and philosophy was premised on his Cambridge University assignment to attempt to eradicate the influence of the work of Bernhard Riemann and Georg Cantor. Out of this effort, formerly led by Russell, developed the "unification of the sciences" project, now sponsored by the Reverend Moon's Unification Church, and the influential History of the Applied Sciences project, based presently at Harvard and Johns Hopkins universities.

Whether or not the professional mathematician or physicist is aware of these issues, the hairs rise on the nape of his neck of most today whenever he is challenged to subordinate his activities of research and development to purely Riemannian methods. President Reagan's current science adviser, Dr. George Keyworth, is a professed fanatic on these issues.

Despite the 1977 IISS campaign of personal vilification against such as Keegan, Bardwell, and LaRouche, the practical issue of beam-weapons could not be suppressed so easily. Above all, there were increasing indications of Soviet progress toward developing precisely such capabilities. The energy with which the Soviets have continued their space programs and certain other indicators have been most relevant on this point.

Ironically, the physics of beam-weapons development was already in practice with the first successful production of a deployable thermonuclear weapon. Dr. Friedwardt Winterberg has published a book, *The Physical Principles of Thermonuclear Explosive Devices* (1981), in which the basic physics of the H-bomb are outlined. Dr. Steven Bardwell is compiling for early publcation a guide to beam-weapons systems meeting the technical needs of both intelligent laymen and professionals. We limit our remarks here to the most general principles involved.

The possibility of a thermonuclear detonation may be fairly described as depending upon reaching certain minimum critical values of temperature and compression. The problem is that compression-heating of the charge tends to cause the charge's material to expand in such a fashion as to defeat the required degree of compression. Consequently, working within the limits of a fission trigger, the problem of thermonuclear detonation is that known as the problem of effecting *isentropic* compression; this may be fairly described as preventing compression from being converted to heat in such a manner as to defeat the continuing process of compression.

The solution to this problem of isentropic compression is defined in principle by Riemann's cited 1859 paper outlining the generation of an acoustical shock-wave in an "infinite cylinder."

That 1859 paper was "classified" by Western governments as part of the security-wraps around the H-bomb's secrets—although the significance of the long-published 1859 paper is openly treated in *published Soviet literature!* A similarly ludicrous exercise in the name of "national security" occurred under the direction of James R. Schlesinger, who classified Soviet secrets revealed to a California scientific audience by a prominent Soviet relativistic-beam specialist! Schlesinger's infantile action, we later learned, was taken at the insistence of the British government!

The translation of these principles of H-bomb detonation into weapons-systems which can kill H-bombs began to be possible with the development of the laser. As we continue the development of beam-systems beyond the ordinary sort of laser into the range of higher-order energy-densities, such as x-ray lasers and so forth, we develop the capability of producing controlled beams whose physical behavior is analogous to the 1859 experimental design of Riemann.,

This line of development leads into three categories of military beam-weapons capabilities, of which the first two are presently practicable projects of relatively short-term research and development.

1. *Laser anti-missile systems*. These are stationed inside an orbiting space-platform or powered space-vehicle. (Powered space vehicles are part of the spectrum of space-based systems designed to cope with anti-satellite weapons-attack.) The platform selects its target, typically a nuclear-armed missile entering the stratosphere. The laser beam dwells on the target, tracking and following the moving missile as the beam burns ("ablates") its way through protective layers, and then performs its destructive function on the apparatus within the shielding.
2. *The Relativistic-Beam System*. The beam in this case destroys the target upon impact. Unlike the laser, which must burn its way through, a relativistic beam, from suitable forms of x-ray lasers on up, transmits a destructive shock upon contact, and then moves on quickly to the next assigned target.
3. *Future Systems*. As Bardwell elaborated the work of a special task-force in 1977, it is feasible, on principle, to develop a ground-based anti-missile beam-weapons system. One of the beams of this system bores a channel through the atmosphere. The killer-beam progresses along this channel to its target. Space-based killer-beams against earth-targets are, on principle, a feasible system for the future.

It is proposed that the United States immediately launch a "crash program" for earliest-possible deployment of anti-missile beam-weapons systems of the second category, and undertake longer-term research and development respecting systems of category three.

Budgetary Requirements of the Program

We do not specify dollar-amounts for such development here. Rather, we indicate now the considerations upon which budgetary-requirements estimations must be premised.

For reasons which ought to be obvious from study of previous instances of "science-driver" categories of military programs, including the Nazi Peenemünde example, effective high-technology military programs depend upon a relatively much broader base in civilian science and in the productive technology of the civilian economy. Herein lies the principal reason for sometimes almost treasonous opposition to beam-weapon development from among advocates of a "technetronic post-industrial society."

The principal support for the military development must come from three broad-based research and development efforts in the *civilian sector of governmental and private expenditures:* 1) expansion of NASA; 2) expanding the rate of expenditures on fusion-energy research slightly beyond those specified in the McCormack Fusion Energy Engineering Act of 1980, and a new project-area of basic research, and 3) development in the domain of applications of relativistic beams in general.

The work of NASA defines not only our national capabilities for deploying a range of varieties of space platforms and vehicles. As the case of Voyager observations of Jupiter and Saturn illustrate the point, we efficiently overcome some among the most destructive features of the Newton-Maxwell program by empirical discoveries which confront us in space-vehicle-based exploratory observations. NASA should develop those capabilities which have subsumed military applications under the auspices of a mandate to achieve such targets as place a habitable human observatory on Mars by such an approximate date as 2010 A.D. All that we require for military purposes respecting equipment and logistical systems in nearby space will be mastered more or less automatically as a by-product of such a mandate.

The most-crucial major area of fusion-energy research respecting application of relativistic-beam technologies is what is termed "inertial confinement fusion," the isentropic compression of a small pellet containing a thermonuclear charge to effect a thermonuclear micro-explosion. This specific point of military interest in promoting civilian research and development is merely a facet of related knowledge and engineering capabilities to be acquired through sharing of knowledge by professionals engaged in all facets of fusion and related research.

Relativistic beams represent in and of themselves one of the most fruitful areas of imminent breakthrough in civilian technology. Laser and more advanced modes of isotope separation can effect reductions in cost by up to an order of magnitude in the final phase of refinement of nuclear fuel, and have related applications for isotope-separation modes of refinement of similarly most-valuable elements. As these methods are perfected, civilization's practice in metallurgy and other affected fields will be revolutionized, breaking through whole categories of what might otherwise appear to be limited resources.

Mastery of beam-technologies is also the key to improved breeding of nuclear fuels. Related methods permit us to generate controlled neutron-fluxes of the variety which can destroy the radioactivity of unwanted by-products of fission combustion. In related ways, as we have already just emphasized, this is the doorway which leads us to new, vastly superior forms of basic industrial technologies beyond the imagination of most citizens today.

Out of the repertoire of methods and hardware *produced by such civilian research,* our Air Force (for example) can assemble the off-the-shelf capabilities needed for the indicated range of military systems.

Ironically, these indicated expenditures will not cost the American taxpayer a net penny. The NASA research and development effort is best estimated to have paid back to the U.S. civilian economy more than 10 dollars for each dollar spent. The breakthroughs in technology effected directly or indirectly through NASA research and development gave the United States its highest rate of annual increase of productivity during the post-war period. Even after NASA began to be taken down during 1966-1967, the chief source for the diminishing rate of growth of productivity during the years thereafter was technology produced by NASA research and development.

Indeed, in our military technology today, what is presented as a new system is usually something chiefly left over from the drawing-boards of aerospace research and development from the pre-1967 period. We have fallen behind by about 15 years in our nation's technological capability, especially in respect to technologies of military relevance.

Even were such pay-back not assured, how much would any sane citizen pay to free his or her family from the continued and presently increasing threat of thermonuclear holocaust?

The CHAIRMAN. Thank you very much for your statement.

Mr. Stevens, you did not make reference to the study by the Fusion Energy Foundation, which Ms. Kokinda referred to, on the implications of lack of energy development on the population of the Third World.

Are you acquainted with that study?

Mr. STEVENS. Yes.

The CHAIRMAN. I noticed in her reference, she indicated the study said that over 100 million people had died the last 15 years because of the failure of policy and that, if I understand the words correctly, the failure to produce enough energy will mean that the existence of some 2 billion people will be threatened by the end of this century. Is that correct?

Mr. STEVENS. Yes.

The CHAIRMAN. That is a fairly startling statement. Would you care to outline a little further the basis for that statement?

Mr. STEVENS. Definitely. When we look at energy, we are looking at a prime mover for the whole economy. It determines to a large extent productivity of an economy and if we look at the way in which an economy develops like the United States of America, the best example of how an industrial economy develops, in fact I think it is one of the reasons our country was founded the way it was and what our Founding Fathers went into great detail on, they were looking forward to making the United States of America the most powerful nation on earth on the basis of industrial development.

In fact, Alexander Hamilton detailed this as a first report of the Secretary of the Treasury back in the 1790's.

That sort of policy has to be based on the most advanced technologies, getting the most to achieve the highest rates of productivity. With the sort of policies that we have had with Mr. McNamara at the World Bank and so forth, where we had the pick and shovel approach to development of the Third World, we have had these countries tied into the backward technologies. In the world division of labor, they have not been able to supply the sort of productivities they could otherwise have been capable of doing.

Originally there were plans in the Atoms for Peace and other programs to carry out massive nuclear development projects in the Third World, in India, in the Middle East and in particular that one I mention because it went a long way toward solving some of the critical economic problems faced in the Middle East that could lead to peace in that region. This is one of the reasons why President Eisenhower, President Johnson and even President Nixon were attempting to follow through on such a program.

These programs got side tracked and destroyed by the Malthusian proponents and what happened as a result is you did not have the sort of economic takeoffs that you could have had in those Third World countries. Also simultaneously, if the U.S. economy is not operating at high productivities, this affects the whole rest of the world.

For example, we are importing the oil today, because of the fact that we did not develop as many nuclear reactors as we could have. Furthermore, if you look at it even from an environmentalist's standpoint, we are now faced with the fact that the overuse of fossil fuel could be affecting us 20 years down the road environmentally. If the continued policy of no nuclear goes on for the next 10 years, the United States will be in such a decrepit economic situation that it could no longer provide a driving force, that is provide the plant and equipment and investment necessary to develop the Third World that it could have otherwise done. That Third World will not be able to get the resources to do that and they will be faced with a continuing downturn in their circumstance, that is if we do not have war intervene.

What I have outlined is actually what Dr. Teller has pointed out, what causes war is the lack of energy, the lack of those high technology resources that could increase productivity and agriculture and so on.

We are in the position today and we have done detailed studies on this, we could take the Sahara region in Africa and in 5 years turn that into the Kansas of Africa on a scale 10 times the size of Kansas in terms of output. We could do the same thing in India and make a lot of money on this by using our advanced technology.

Just the other week, President Mitterand of France while visiting India began to propose similar types of projects and in fact also made a deal with the Indian Government for fueling the American-built nuclear reactor in India.

While in the past we have not been too happy with Mr. Mitterand, apparently this is the beginning of a turn around in his viewpoints on these subjects and he is beginning to address this whole question. He himself said that what is key to the whole world economic situation is carrying out those sorts of projects that will increase the productivity of the world economy and France simultaneously is going ahead with an extremely strong nuclear program.

The CHAIRMAN. Thank you very much. I appreciate the testimony from both of you. Your statements are of course in the record in full. Thank you.

We will next hear from a panel composed of Doug Scott, director of Federal affairs, Sierra Club; Scott Sklar, political director of the Solar Lobby; Rafe Pomerance, president of Friends of the Earth; Mr. Nogee, Environmental Action; and Mr. Chandler, Washington representative for the Environmental Policy Center.

STATEMENT OF DOUGLAS W. SCOTT, DIRECTOR OF FEDERAL AFFAIRS, SIERRA CLUB, SAN FRANCISCO, CALIF.

Mr. SCOTT. Thank you, Mr. Chairman. I am Douglas Scott, the director of Federal affairs for the Sierra Club. I was going to begin by saying that at the risk of polarization, I was from the Sierra Club.

I do appreciate having the full text of my testimony included in the record. I would also like to submit for the record four sets of documents that I believe should be a part of the actual record and which are referred to in my testimony. Briefly these are a letter dated October 29, 1982, which the Sierra Club sent to President Reagan urging him not to make the nomination under question here. Second, an internal memorandum of the Bonneville Power Administration written by Don Hodel and dated September 3, 1976, concerning the plotting of reactions to Bonneville's own conservation study prepared by Skidmore, Owings & Merrill, consultants, and appended to that are several extremely relevant documents from SOM and newspaper clippings of that period.

The CHAIRMAN. Do you have copies of those documents? I would like to make a judgment as to whether they should be placed in the record or in the file. If they are relatively brief, they will be made a part of the record.

Mr. SCOTT. Third, an extremely important report from the General Accounting Office recently released, prepared at the request of Representative George Hansen of Idaho concerning the basic role of Mr. Hodel and BPA in the 1970's both as regards to the forecasts——

The CHAIRMAN. I think that report is already on file in the committee. That will be made a part of the file rather than part of the record.

Mr. SCOTT. Very good. Thank you, Mr. Chairman.

The Sierra Club is a nonprofit and bipartisan citizen membership organization today comprising more than 340,000 members. Since its founding, we have become and I think it is fair to say, widely recognized as advocates for environmental protection. Often this means we are viewed as opponents, opponents of such things as logging some particular area of timber, for building some particular dam, for example.

In each case, however, the point of our advocacy is not to be opponents but to be advocates for the positive protection of the things these timber sales or dams or other projects would destroy. All of this is summed up in our informal motto, "Not blind opposition to progress but opposition to blind progress."

Today I appear to express the Sierra Club's opposition to the confirmation of Donald P. Hodel to be Secretary of Energy. I do this in the same spirit, in asking each Member of the Senate to vote "nay" on the confirmation of Mr. Hodel. We are asking that you vote in effect a resounding "aye" for major changes in the direction and balance of our present national energy policy.

Today, at midterm the energy policies of the Reagan administration are not the comparative mystery they were 18 months ago when the Senate confirmed Secretary Edwards. If confirmed, Mr. Hodel will begin carrying out the policy already set in place even as he will begin to assert his own influence in setting the future course of that policy.

It is on the basis of our concern with that policy and the close congruence of the characteristics of that policy with his own record when he was the administrator of the Bonneville Power Administration, that we conclude that Mr. Hodel lacks the essential qualifications to assume the important responsibilities of Secretary of Energy.

Indeed we feel that his appointment to this position would seriously jeopardize this country's efforts to chart a clear and sensitive sustainable course for energy policy.

What is most troubling to us about the nomination of Mr. Hodel is the degree to which his past record as an energy administrator reflects the very excesses and mistaken judgments which have characterized the Reagan administration energy policies over the past 2 years.

The Reagan administration energy policy is one of single-minded adherence to nuclear power and blind technological bias against Federal efforts to encourage energy conservation and the increased and prompt use of renewable energy resources.

This committee and the Congress as a whole have consistently repudiated efforts by the administration to devastate the energy conservation and solar budgets and to dismantle individual conservation programs, yet the Reagan budget has steadily accelerated already enormous subsidies to the commercial nuclear power industry and is cutting Federal aid in virtually every other area of energy development.

The Reagan energy policy has also been characterized as a determination to avoid serious public involvement in national energy planning by deliberately disregarding the value of thorough environmental and analytical review and by a predictable deterioration in State-Federal relations in areas of critical importance to individual States.

We will attempt to show through analysis of Mr. Hodel's past record in energy administration that each of these destructive themes which has so marred the current administration's energy policy is mirrored in Mr. Hodel's own record.

Favoritism for nuclear power, neglect of conservation alternatives, fiscal mismanagement of major projects, denial of public access, aversion to ideas and facts which run counter to free-chosen policy directions and a misunderstanding of the purpose and value of environmental review, all these elements speak equally against the continuance of the Reagan energy policy and against the confirmation of Mr. Hodel to administer that policy and to chart our Nation's energy future.

I recognize that these are serious charges and it is incumbent upon us to provide you with the facts which we believe demonstrate these charges.

I draw from our experience as an organization working in the Pacific Northwest with the Bonneville Power Administration and with Mr. Hodel throughout the period of his tenure. During that period, I served as the Sierra Club's Northwest representative and was directly and closely involved in the events I will relate.

Let me begin with the most unfortunate legacy of Mr. Hodel's tenure as the administrator of the Bonneville Power Administration, and that is the Washington Public Power Supply System nuclear construction program that is in fact a creature of the Bonneville Power Administration. It could not have existed without the Bonneville Power Administration and during the time it was conceived and put together, Mr. Hodel was playing a crucial role.

Cost overruns of the five WPPSS nuclear powerplants averaged almost half a million dollars per hour from 1977 to 1981, originally conceived with a total cost of $4 billion, the most recent cost estimate for completing the plants before they started being dropped was $23.9 billion. Completion dates have slipped an average of 57 months on these plants between 1977 and 1981, despite the fact that no court decree of any sort imposed any constraints on the construction of these projects.

Of course by now we all know the unfortunate story that has unfolded. Two of these plants, units 4 and 5, will never produce a single kilowatt hour of electricity. The total bill for the region ultimately must reach at least $7.4 billion for this colossal mistake in energy planning. Unit 1 has been mothballed and the cost of the units that remain under construction continue to soar out of control.

What does all this have to do with Donald Hodel? In the first place, he is largely responsible for the program which launched these particular powerplants and their financing arrangements. Although the planning for the initial three units of the WPPSS projects began before Mr. Hodel became administrator of BPA, the net billing agreement which provided the basis whereby BPA in fact financed those three plants were conceived and executed while he was administrator.

In addition, Mr. Hodel was the architect of phase 2 of the hydrothermal power program which contained the plan to build units 4 and 5 and their financing through BPA's substantial assistance.

I wish to stress that my testimony concerning BPA's role under Mr. Hodel in committing the Northwest to this disastrous energy program is not based on my own personal belief or the club's experience but is supported by the findings of the Federal Courts in cases which I cite and by the findings of the General Accounting Office in the report prepared for Congressman Hansen of Idaho.

Let's look first at the cost overrun problem because we have heard that Mr. Hodel should be confirmed as——

The Chairman. If I could interrupt for a moment. I very carefully read the GAO report that you refer to. I did not reach the same conclusion you did from reading that report.

I wonder if you could make reference to the GAO report to indicate what it was they said that leads you to that conclusion?

Mr. SCOTT. I would be happy to do that, Mr. Chairman. This is a letter report. I am looking at page 3 at which the heading is "BPA Involvement in Regional Demand Forecasting" which points out that while the forecast utilized by the utilities in the region are created by a private entity known as the Pacific Northwest Utilities Conference Committee, Bonneville is a sitting member of the PNUCC, Mr. Hodel and his associates at Bonneville played a crucial role in the making of those forecasts and——

The CHAIRMAN. Bonneville did not make any forecasts. They may have used the forecasts made by others. Is that not the conclusion of the GAO?

Mr. SCOTT. No, sir, it is not. At the bottom of page 3 and continuing to the top of page 4, it indicates that 40 percent of the projected demands by PNUCC was demand for which all of the technical work and assistance for small utilities, mostly preference customers in the region, was provided by Bonneville. Of those forecasts, 40 percent were Bonneville's.

The CHAIRMAN. With respect to the small customers.

Mr. SCOTT. Forty percent of the total demand for power projected by PNUCC, 40 percent of the 7 percent that was being projected.

The CHAIRMAN. Did it indicate it was their conclusion that PNUCC had not independently verified that information?

Mr. SCOTT. No, what they indicate is that Bonneville had not independently verified the PNUCC report.

The **Chairman**. That is my conclusion, that the GAO in looking at it said maybe Bonneville was too uncritical at looking at PNUCC's forecast.

Mr. **Scott**. Correct.

The **Chairman**. They nevertheless then used what PNUCC had come forward with in putting their information out to their members.

Mr. **Scott**. Correct and publishing documents that then bore the stamp of approval of the Bonneville Power administration, the power outlook documents that are published annually.

The **Chairman**. The power outlook document was published.

Mr. **Scott**. Simply uncritically accepted the PNUCC forecasts.

The **Chairman**. I read the GAO report in quite a different way than you apparently have, and that is the reason I asked the question.

I thought, knowing GAO and their predilection to find fault with everyone, if they were to do a report of this committee, it would be very critical. If they do a report of the Sierra Club, it would be very critical. I say that just to be ecumenical.

I thought it was a very restrained document.

Mr. **Scott**. I might add Bonneville found no factual inaccuracy in its review of the GAO report and so signs off on a letter at the back of the report.

The **Chairman**. The conclusions GAO made but maybe not the conclusions you have stated they made.

Mr. **Scott**. I do not think I am misrepresenting them.

On page 4 of the GAO report, there is a section titled "BPA's Representation of the Region's Need for Additional Generating Capacity to its Customers." It documents it in a way that could be documented at much greater length the role Bonneville and Mr. Hodel played in saying again and again with the full power and authority and charisma of this enormous Federal energy agency and its leadership, we are going to need a lot more powerplants, let's all sign up and build them.

The **Chairman**. Was that opinion different from that of almost every other entity in the Northwest?

Mr. **Scott**. That opinion is different from a growing chorus of university studies, State forecasts by Washington and Oregon, the House and Senate of the State of Montana, the Sierra Club, the Natural Resources Defense Council, the Oregon Environmental Council, the Idaho Environmental Council, the Washington Environmental Council, groups which through 1973, 1974, and 1975 were saying wait, look, listen, there is another course, these forecasts are way off and not just because we say they are way off, but here are Washington State University experts who say hold on a minute. The Wall Street Journal found an economist from Bonneville who said he thought these forecasts were way off.

That is contemporary in 1975.

The **Chairman**. That was the minority view at that time. It was not just Bonneville Power.

Mr. **Scott**. That is true.

The **Chairman**. I have been in the minority.

Mr. **Scott**. There is no satisfaction in having been in the minority on a mistake of this uncalculable——

The CHAIRMAN. Or almost any other. That is true.

Mr. SCOTT. On page 6 of the GAO report, it documents BPA's involvement in customer's decisions to participate in plants 4 and 5 and contrary to what was said this morning on the record, Bonneville did not resist plants 4 and 5. Bonneville was prohibited by the laws that existed at that time from financing 4 and 5 so it spent enormous time and effort, largely the work of Mr. Hodel, pulling the utilities of the region, the preference customers, into jumping onboard, signing the participation agreement with WPPSS for 4 and 5. As you know, there is a large and growing number of lawsuits contesting this point in the Northwest.

The CHAIRMAN. I understand that. Might I just for a moment again digress, and I do not mean to prolong this.

If you were the administrator of Bonneville Power, and if your responsibility were viewed by them as meeting the power needs of the region, and if the concensus opinion of the time said this is the projected need, what would you have done?

Mr. SCOTT. Since I was outside the doors where most of these decisions were being made myself, Mr. Chairman, I would have opened the doors and let the rest of the people in the region in on what was being done on the decisions before they were made.

The Hydro-Thermal program was conceived entirely behind closed doors.

The CHAIRMAN. That is not entirely true. I remember some discussions of it when I was in the State legislature in Idaho.

Mr. SCOTT. The public was not informed. The advisory committee Bonneville had——

The CHAIRMAN. I was part of the public. I had no special means of information. That was back in the 1960's when we were going through the question of what would be the pattern of growth following the time that the hydro facilities of the Federal system were insufficient to meet all the needs of the preference customers, who then would provide the power?

Would we in the Northwest go the way of TVA and have the Federal Government totally meeting the demands of the preference customers, or would we find some other means.

The hydro-thermal accord that was forged during a period of the late 1960's going through the 1970's was the outgrowth of a decision that we would not become a totally Federal system.

It has I think a broader context and perhaps a little longer context than you imply as being totally within Bonneville, totally within one group, although certainly they were a very dominate force and a very strong force.

Mr. SCOTT. In 1973 and 1974, when Bonneville was playing the central role, doing the paperwork, holding the meetings, keeping the minutes in many cases, particularly on the 4 and 5 decisions being consummated in the Northwest, one Federal official sat at the table. His name was Donald Hodel. Though he did not apparently realize this, this Congress and this committee had passed a law some years earlier called the National Environmental Policy Act, which required open public review of alternatives to major Federal actions before they were taken.

The Federal courts have ruled, Otto Skopil on July 1, 1977, in a decision that I think ought to be in your record, National Resources Defense Council and Sierra Club, D. Hodel, absolutely, and his agency had completely failed to meet the mandate of NEPA and to review the alternatives before the contracts were signed. By the time the NEPA statement was done, it was contrary to everything that law stands for. No alternatives had been explored by Bonneville. No alternatives had been put before the region with the authority of Bonneville behind them saying we have this course to go, or this course, or this course. It was one course, my way, sign the contract, do it quick, you will be sorry if you don't, I will have to cut off the power. That is what he was saying.

The CHAIRMAN. With the projections of power consumption that were then the conventional wisdom of the Northwest, was it not a fact there was an insufficient amount of power to meet the projected need, if you believed those projections?

Mr. SCOTT. There would have been an insufficient amount of power to meet the preference customers' needs way out in the late 1980's, if you were not also signing contracts for major industrial, the Alumax contract, which was under discussion at that time and which Mr. Hodel signed, making a huge commitment of power to the Alumax plant at a time when he was saying to preference customers that had a preference right, better sign up quick because I am going to have to cut you off.

The CHAIRMAN. I understand that, but there was another policy consideration as well at that period of time, and that was whether or not the aluminum industry in the Northwest was either viable or worthy of the commitment it had received.

There were those then, as now, who were saying we do not need to have any more power plants, we can close down the aluminum industry and use the power they are consuming.

Mr. SCOTT. I have sat in on a great many of those discussions and I never heard anyone advocate that.

The CHAIRMAN. I heard your representative say that in Sand Point, Idaho, at a meeting up there that I attended later when I was a member of Congress.

Mr. SCOTT. We will have to go back to that one. It is certainly not the position of the Sierra Club at any time. Our position was that the aluminum industry ought to pay a good deal more for its power, recognizing the reserve requirements and other things it contributed to the region.

The CHAIRMAN. I am not trying by that question to indicate that isn't one option, but nevertheless, that was not an option that was a preferred option then, and you would indicate it is not a preferred option now.

Mr. SCOTT. It was not an option that was investigated along with the other options that the law commanded Mr. Hodel to investigate and lay before the public before decisions were made. That is the findings of the court.

Mr. Hodel has been presented to this committee and I may say following the remarks of Senator Hatfield this morning, I certainly begin by saying that the personal character challenges are not what this is about but he was presented to this committee as a proven great administrator, great and effective manager.

The failure of oversight by Bonneville of WPPSS 1, 2 and 3 during the early 1970's when Mr. Hodel was responsible for that oversight is the direct cause of run ups in power rates in the Northwest going on now. This has nothing to do with 4 and 5. Four hundred percent increase in Bonneville's preference rate over the last several years——

The CHAIRMAN. It has something to do with 4 and 5, does it not, because those rates are also affected by the $2.25 billion worth of funds that have been issued with respect to 4 and 5 that are obligations——

Mr. SCOTT. Those have not started being paid off yet. We are talking about cost runups that only have to do with the overruns on 1, 2, and 3.

The CHAIRMAN. The impact on rates of 4 and 5 is also involved.

Mr. SCOTT. It will be felt in the region for generations and will be remembered for a long time out there. Four and five will be more than numbers in the Pacific Northwest for as long as you and I enjoy that part of the country.

The failure of oversight by Mr. Hodel cannot be ignored. His agency owned 100 percent of the output of two of the WPPSS plants and 70 percent of the output of the other, of the first three. They had contractural obligations for the output.

If you owned something of that scale and would have to pay for it under contract that obligated you to pay whether the cost went through the roof for it or not, whether any power was ever produced or not, the bond statements, it is right there on the front page of the bond offering, Bonneville will pay the United States regardless, if you had that responsibility, one would think you would be very cautious to observe that good management was being pursued by the managers of the plant, the constructors of the plant and that good procedures were being followed to keep costs under control.

The record which I detail in my statement is absolutely to the contrary. These net billed plants enjoyed the most outrageous cost overruns. On page 9 of my statement, the cost overruns are laid out by projects 1, 2, and 3, the slippage in the schedules, again, no lawsuits from our organization.

These are WPPSS numbers and Washington State Senate investigation numbers that are included in my statement.

The results of these cost overruns have been profound. At the same time as these costs have increased, Bonneville has begun including them in its rates.

BPA's average preference rate has gone from 4.13 mills per kilowatt hour in 1979 to 18 mills per kilowatt hour in 1982, a greater than 400-percent increase in less than 3 years.

The primary side effect, lest someone think this is a regional problem, the primary side effect of this has been that BPA has been unable to repay the U.S. Treasury its now long-overdue loan for the construction of the Federal Columbia River Power System. Thus, every taxpayer in the country has felt the impact of the WPPSS construction program and the lack of effective cost oversight during Mr. Hodel's tenure. All that money is out from the U.S. Treasury at 3 percent.

The CHAIRMAN. Might I ask one other question at this point. Mr. Hodel left BPA in 1977, at the end of 1977. Was there effective cost oversight of those starting January 1, 1978?

Mr. Scott. In testimony of the House Water and Power Subcommittee on January 19, 1979, the new Administrator, Mr. Sterling Monroe, Mr. Hodel's immediate successor, said on page 5 of his testimony:

> When I came to BPA more than a year ago, one of the first problems my staff called to my attention was the difficulties they are having over the years in gaining meaningful and effective oversight——

The Chairman. That was not my question, what he said in 1979. I read that part of your statement. I have read your entire statement.

Do you or your organization believe that Bonneville effectively controlled the cost of the WPPSS units starting in January of 1978?

Mr. Scott. Senator, as you know, by that time the scale of the overruns was finally beginning to settle in on people in the region, the fact that it was not just some little problem typical of normal construction projects and practices. At that point, a great many more resources started to be put into effect but at that point the WPPSS debacle was so far down the track, they were finally just going back, trying to find the accounting and trying to get on top of those contracts. At that point you were stopping a moving snowball.

The Chairman. I am not trying to play games with you on this issue, but obviously you know there was a change of administrators that came in at that time. If I read you correctly, what you are trying to say is that all of the problems WPPSS has were centered in the period of time prior to January 1978.

Mr. Scott. I do not mean to imply that. That certainly is not the case. The problems continued.

The Chairman. The later administration of Bonneville is not under question at this time, but I am trying to get some kind of perspective as to how you regard whether or not what has been done since Jan. 1, 1978, has been appropriate.

If I understand what your organization has said and what GAO said, they did not draw a sharp distinction and say that everything prior to Dec. 31, 1977, was bad and everything since then was good, and all the problems we have now are a result of what happened before that time.

I think it is also fair to note, is it not, that Washington Public Power Supply System is a creature of the State government of the State of Washington, and the State of Washington has primary oversight responsibility over the activities of WPPSS. As a matter of fact, the legislative committees of the State Legislature of the State of Washington have had active oversight concerning the activities of WPPSS during all of this period of time.

Mr. Scott. Much more active in the recent years as the scale of the problem became——

The Chairman. As all of us became more aware, you, I, and everyone else became more aware of the problems.

Mr. Scott. Patterns of failure in oversight by the owner of the output of the plant, by the agency which would have to pay. The State of Washington and WPPSS do not have to pay these bills.

Bonneville has to pay them. One hundred percent of two of the plants and 70 percent of one of the others.

The CHAIRMAN. None of 4 and 5.

Mr. SCOTT. None are 4 and 5 which I will come to in a moment.

Bonneville—as the tragic circumstances began to materialize—Bonneville hired consultants to look into the problem. There was a summary of the various consultant reports and GAO report and it is an indictment of the lack of effective BPA oversight of the WPPSS project during Mr. Hodel's administration.

I will not quote these all. They are specified in my testimony.

One of the things that was found by Theodore Barry & Associates was there appeared to be no focal point or effective mechanism for BPA project engineers to coordinate their oversight activity and also BPA had not defined the information required to play an effective oversight role.

These management faults must lie somewhere. These continued to be summarized in a GAO report requested by Chairman Dingell of the House committee and that report of 1979 speaks loudly of Mr. Hodel's neglect in monitoring the WPPSS projects. I am quoting from the GAO:

> Considering BPA's interest in the output of the WPPSS nuclear plants, it is somewhat surprising that BPA officials did not insist upon a more direct and positive role in the construction program* * *. * * *although involved in a multi-billion dollar nuclear construction program, BPA has not closely monitored nuclear plant construction* * *.

What were Mr. Hodel's subordinates reporting to him about these problems? What were his responses? Did he encourage his subordinates to be more aggressive in their audits and oversight or did he discourage such action or was he simply negligent? Did he respond to indications of problems at WPPSS? Did he write to WPPSS to express any concern in response to his auditors' reports?

We believe these questions deserve answers from Mr. Hodel.

We turn now to WPPSS 4 and 5. WPPSS 4 and 5 were not financed in the net billing arrangement by Bonneville for one simple reason, the legal authority for the net billing alternative had ceased to exist by the time 4 and 5 emerged; 4 and 5 were plants contemplated in phase 2 of the hydro thermal power program and if anyone was the architect of phase 2, it was Donald Hodel.

Considerable polite coersion was brought to bear on the region's utilities and direct service industrial customers who agreed to phase 2 including WPPSS 4 and 5.

First, Mr. Hodel advised them that unless progress was being made in developing such a program, he would issue notices of insufficiency that would terminate Bonneville's commitment to meet the public utilities' load growth beyond 1982.

Second, there was the clear implication that timely completion of the facilities then under construction on the Federal Columbia River Power System could not be guaranteed absent such agreement.

BPA documents uncovered in the course of Federal court proceedings on these matters showed that Mr. Hodel played the leadership role in bringing this program to fruition including 4 and 5.

The CHAIRMAN. Mr. Scott, I hate to interrupt, but you are now on page 12 of a 22-page document. We have already occupied half an hour. I took some of your time, but I did not take half of it. I wonder if you could summarize?

Mr. SCOTT. I am attempting to do so.

The CHAIRMAN. Thank you. I would not do that if there were anybody else in in the room listening. I have read the statement.

Mr. SCOTT. WPPSS 4 and 5 are the direct product of Mr. Hodel's phase 2 of the hydro thermal power program. The facts are that Mr. Hodel utilized the forecasts in the region, forecasts that were in fact under challenges, documented in this statement, and used those together with the threat of cutting off Bonneville power supply of load growth for the public utilities in the region to urge everyone to get on the train because it was leaving the station.

I might add that a growing chorus of groups including the Sierra Club urged the utilities in the region to stop, wait and listen.

Seattle City Light heeded that call and a few other utilities in the region. They today do not own any of the debt for 4 and 5 but everybody else stampeded with a gallop that was largely being rushed by Mr. Hodel and made commitments that are now the source of aggrievous financial results.

As the Idaho Falls Post-Register editorialized 2 weeks ago, the utilities' faith, particularly the little municipal public utilities, the cooperatives, was in BPA and Mr. Hodel. BPA was pushing them to sign up for 4 and 5.

The CHAIRMAN. I know the people in that paper quite well, as you would guess. It is interesting to note that up until now they have never editorialized against what was done. During the period of time when these critical decisions were being made, their infinite wisdom focused upon the problem never once.

Mr. SCOTT. I think that is a tragedy for the region and those of us who were trying to say, use the NEPA process, force these difficulties out into the open so that the region can make a choice but were rebuffed at every turn. The results speak for themselves.

The present purposes, the point is not that hindsight has shown Mr. Hodel was drastically wrong but that he in fact ignored studies and reports that were available to him at the time of his inflated projections and those reports were done and I cite them here by Washington Energy Policy Council, by the Thermal Power Plant Site Evaluation Council, by the Sierra Club, by Skidmore, Owings & Merrill and by Bonneville itself.

I document Mr. Hodel's role in belittling the results of the first serious conservation study done in the region, the Skidmore, Owings & Merrill study and I have asked for you to include in the record a most illuminating memorandum from Mr. Hodel dated Sept. 3, 1976, in which he indicates the press was starting to ask him about the Skidmore, Owings & Merrill report and suggesting that it documented that the new nuclear plants were not needed in the region and that he wanted to get together in a meeting real quick to figure out a press strategy.

The fruits of that meeting are quite evident. On Oct. 5 and 6, BPA officials belittled the report and misrepresented its intentions, talked about drastic changes in the lifestyle for the region if the report were implemented, to the point that Skidmore, Owings & Merrill senior officials responsible for the report found it necessary to issue an open press rebuttal of the misrepresentations that Bonneville had launched.

There is a long section in my testimony about the failure of Mr. Hodel with regard to NEPA.

The tragedy for the Pacific Northwest and for the rate payers and their children who will be rate payers is that had the law that this committee authored been followed by the Federal official who was charged to uphold the law instead of resisting every step of the way, in 5 years of litigation, we would have had an environmental impact statement on the hydro thermal power program and phase 2. We would have had a review of the alternatives. We would have had a review of whether the forecasts were the subject of any particularly large concensus or not, in a documentable and way that could be checked for its legal sufficiency and the region might have avoided this disastrous choice.

I myself met with Mr. Hodel during that year and corresponded with him. My attorneys corresponded with him. We were urging that NEPA be complied with before contracts that were part of the hydro thermal power program phase 2 were entered into. We got a cold shoulder. On one occasion we even got a phone call from Mr. Hodel who called up to say he was in fact going to sign the contract for Alumax, if we wanted to sue him, that was perfectly well but he was not going to do a NEPA statement at all.

Mr. Hodel's disregard for NEPA's requirements were so blatent that it prompted an unusual critical letter from the Chairman of CEQ during the Nixon administration, Russell Peterson, and in that letter Chairman Peterson reviewed the draft EIS prepared by the EPA, they were doing kind of a glossy and thoroughly inadequate view of the broad question of whether they should continue to cooperate in the plans of the region.

I quote at length from Mr. Peterson's letter and there were similar letters coming out of the Interior Department at that time condemning Mr. Hodel's efforts on NEPA compliance.

At that point Mr. Hodel chose to launch a series of speeches in the summer of 1975 expressing in unequivocal terms his attitude toward NEPA and the preparation of any EIS on Phase 2 and his attitude toward anybody who bothered to raise the question.

In a speech before the Northwest Public Power Association in June of 1975, for example, he criticized and I quote Mr. Hodel, ". . . those who ever since NEPA's enactment have used it to obstruct the orderly progress of obtaining the power supply of this region."

Our thesis would be, Mr. Chairman, that had Mr. Hodel complied with NEPA, there is every reason to believe that the region would not be in the tragic financial straits it finds itself in today.

These themes were carried forward in the now famous prophets of shortage speech. This is a man touted by the administration as a forger of consensus. I sought to be a part of that consensus in a period in the Northwest and found it not forthcoming.

It finally took a decision of the Federal court to bring Mr. Hodel's diatribe to a halt. In 1975 and again in 1977 he was finally ordered after the contracts were signed to do a NEPA statement on the hydro thermal program, phase 2.

Throughout his tenure as Administrator of BPA, Mr. Hodel has demonstrated a readiness to use his auspices as a prominent Federal official to intervene in local political issues or in fact to wrest control of those issues away from local bodies and have them decided by BPA or someone else through direct intervention.

I cite the example of the Pioneer powerplant which was at one time proposed in Ada County, Idaho area.

One could go on with these kind of accounts. They create a record of failure to imaginatively explore alternatives, of commitment to a single view of the energy future of the region that exactly mirror the patterns of the Reagan pro-nuclear anti-conservation energy policy and energy budgets that have been discussed here today.

On his record with the Bonneville Power Administration, Mr. Hodel has demonstrated an unswerving commitment for massive nuclear powerplant construction programs even in the face of studies that showed the plants were not needed and would be too costly.

He has demonstrated a readiness to use his auspices to distort or belittle information which was incompatible with his proposals and having committed the region to the construction of these facilities, he was unwilling to exercise the necessary oversight in order to insure that the plants would be constructed and operated on a reasonable schedule and in a reasonable magnitude of cost.

The ensuing economic catastrophe is something for which he must take a primary share of the credit or blame. He has shown himself insensitive to an extraordinary degree to the views of local and State governments and interest groups where they do not coincide with his own energy agenda.

Many voices sought to change this tragic course in the years Mr. Hodel led BPA. Ours was one but there was a growing chorus of others, the States, the League of Women Voters, the City Council of Seattle, leaders of a few other courageous utilities of the region.

I and my colleagues sought to have dialogue with Mr. Hodel, sought to gain compliance with the underlying Federal laws which could have opened up a true analysis of the alternatives before the region. We were rebuffed again and again. We were patronized again and again. Then when the Federal courts began to respond when Mr. Hodel and his agency would not, we were treated by Mr. Hodel to a public barrage of epithets, inuendos and scapegoating.

We are greatly concerned that the confirmation of Don Hodel as Secretary of Energy will place this same judgment in charge of the entire Nation's energy policies and the tragedy in the Pacific Northwest will in various ways find itself writ large for the Nation.

It is for that reason and because of our profound opposition to the pattern of the energy policy of the present Administration that we strongly oppose your confirmation of Mr. Hodel as Secretary of Energy.

Thank you.

[The prepared statement and additional material submitted by Mr. Scott follow:]

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STATEMENT OF DOUGLAS W. SCOTT
Director of Federal Affairs

SIERRA CLUB

Before the
COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

Concerning the Confirmation of

DONALD P. HODEL
To be Secretary of Energy

1 December 1982

Mr. Chairman, I am Douglas Scott, Director of Federal Affairs for the Sierra Club. My office is in San Francisco, the Club's national headquarters.

The Sierra Club is a non-profit and bipartisan citizen membership organization today comprising more than 340,000 members. The Club is led by a Board of Directors elected by the membership. We are organized into Chapters covering the entire country and now have more than 300 local groups carrying on conservation, education and outings programs.

Since its founding in 1892, the Sierra Club has become a widely recognized advocate for environmental protection, for conservation of natural resources, and for sustainable energy policies. In our advocacy, we are often most widely known for being opposed to things -- opposed to logging some particular area of timber, to building some particular dam, to leasing some particular area, to building some particular project. In each case, however, the point of our advocacy is not to be opponents, but to be advocates for the things these timber

"When we try to pick out anything by itself, we find it hitched to everything else in the universe." *John Muir* sales, or dams, or leases, or projects would destroy or impair. All this is summed up in our informal motto: "Not blind opposition to progress, but opposition to blind progress."

Today, I appear to express the Sierra Club's opposition to the confirmation of Donald P. Hodel to be Secretary of Energy. And I do this in the same spirit. In asking Senators to vote "nay" on the confirmation of Mr. Hodel, we are asking that you vote, in effect, a resounding "aye" for major changes in the direction and balance of present national energy policy.

The U.S. Senate has few opportunities to register its collective judgment about an entire arena of national policy in a single vote. The mid-term replacement of a Cabinet officer gives each Senator the opportunity not only to inquire into the particular suitability of the new nominee, but also into the suitability of the underlying policy of the administration which is being pursued and will be continued by that nominee.

Today, the energy policies of the Reagan Administration are not the comparative mystery they were 18 months ago when the Senate confirmed Secretary Edwards by a voice vote. If confirmed, Mr. Hodel will being carrying out the policy already set in place, even as he will begin to exert his own influence in setting the future course of that policy. We believe it wholly appropriate to review that policy, to inquire into Mr. Hodel's attitudes toward major redirection of that policy, and to use the occasion of his confirmation as an opportunity to express the will of Senators that the policy be changed.

On the basis of his record at the Bonneville Power Administration (BPA), we believe that Mr. Hodel lacks the essential qualifications to assume the important responsibilities of the Secretary of Energy and, indeed, that his appointment to that position would seriously jeopardize this country's effort to chart a clear and sensible course in energy policy.

Obviously, this important position requires an individual who has demonstrated a commitment and capability to fiscal responsibility and oversight, because of the many large and expensive -- to say nothing of technically and politically sensitive -- projects in which the Department of Energy is involved. In addition, at a time when there are many conflicting viewpoints about the direction that this country should take in developing and utilizing its energy resources, the Secretary of Energy must be a person who is open to a variety of approaches and can give meaningful consideration to the viewpoints of varying interest groups. Finally, it is imperative that the Secretary of Energy be a person who is sensitive to the democratic involvement of other branches and levels of government and other interest groups in the development of energy policies and programs that will affect us all.

From 1973 through 1979 I served as the Sierra Club's Northwest Representative, stationed in Seattle and covering Oregon, Washington, Idaho and Montana. During that period, the Club's leaders in the region directed that we take a detailed look at regional energy issues, particularly as they were being shaped and influenced by the federal Bonneville Power Administration. In my testimony today, I want to capsulize concerns which grew out of our experience with BPA during that period, and our experience with Mr. Hodel's central role in energy decisions made in the region.

What is most troubling to us about the nomination of Mr. Hodel to be Secretary of Energy is the degree to which his past record as an energy administrator reflects the very excesses and mistaken judgments which have characterized the Reagan Administration energy policies over the past two years.

The Reagan Administration energy policy is one of single-minded adherence to nuclear power and blind ideological bias against federal efforts to encourage energy conservation and the increasing and prompt use of renewable energy resources. This Committee and the Congress as a whole have consistently repudiated efforts by the Administration to devastate the energy conservation budget and to dismantle individual conservation programs. Yet the Reagan budget has steadily accelerated already enormous subsidies to the commercial nuclear power industry, while drastically cutting federal aid in virtually every other area of energy development.

When the Administration has failed to kill individual conservation programs through budgetary starvation, it has resorted to a simple refusal to implement the law, to relaxing well-considered regulations, and to issuing "no standard" conservation standards. When even these attempts have failed, the Reagan DOE has engaged in a process of selective program destruction through RIFs and targetted firings, most recently exemplified by the firing of Dr. Maxine Savitz, the nationally respected head of DOE's conservation programs.

Despite its constant professions of budget consciousness, the Reagan Administration has shown an extraordinary blindness when it comes to the largest and most wasteful federal energy expenditures. The Administration continues its solid support for synthetic fuels subsidies, even as year after year it advocates cutting the far smaller tax subsidies for energy conservation and industrial energy conservation tax credits.

Most damaging of all, the Administration continues its blind support for what has by now become the example par excellence of a federal energy project out of control -- the Clinch River Breeder Reactor. Now protected to cost close to $9 billion (with imputed interest), the Clinch River project has been plagued by bad judgment, bad management, and a near total failure on the part of DOE to control spiralling costs of individual components or the project as a whole.

Finally, the Reagan energy policy has been characterized as a determination to avoid public involvement in national energy planning by a deliberate disregard of the value of thorough environmental and analytical review and by a predictable deterioration in state-federal relations in areas of critical importance to individual states.

One of the earliest indications of the value which the Reagan DOE placed on public opinion in energy matters came when DOE suppressed thousands of copies of its own magazine, The Energy Consumer, when the magazine made the mistake of reprinting the results of a DOE opinion poll which showed that the American people favored further federal efforts in solar energy and conservation and felt that the area of energy development in which the federal government should spend the least effort was nuclear power. It is worth noting that the author of the suppressed article, who was then the director of DOE's Office of Consumer Affairs, was thereafter demoted and fired.

The Reagan Administration's disregard for analytical and enviornmental review of its energy decisions has been nearly as blatant as its neglect of public opinion. Major reversals of policy on such issues as Appliance Efficency Standards have been initiated without any new quantitative analysis or factual basis to support tyem. The fragile working relationship between the federal government and the states involved in DOE's refusal to countenance the kind of thorough environmental review, early in the siting process, which had been promised by earlier administrations.

As we will show through analysis of Mr. Hodel's past record in energy administration, each one of these destructive themes which has so marred the current administration's energy policy is mirrored in the Hodel record. Favoritism for nuclear power, neglect of conservation alternatives, fiscal mismanagement of major projects, denial of public access, aversion to ideas and facts which run counter to chosen policy directions, and a misunderstanding of the purpose and value of environmental review -- all these elements speak equally against the continuance of the Reagan energy policy and against the confirmation of Mr. Hodel to administer our nation's energy future.

As the Administrator of the Bonneville Power Administration, Mr. Hodel demonstrated a single-minded commitment to nuclear power and a systematic aversion to any programs that would seek to eliminate the waste in our use of energy or rely upon renewable energy resources.

Moreover, having committed the Pacific Northwest to massive nuclear power construction projects, Mr. Hodel was then lackadaisical about any oversight of the progress of the construction of those plants. In consequence, the region faces an economic debacle that is the direct outgrowth of his policies and mismanagement. Finally, Mr. Hodel consistently demonstrated a willingness to utilize his federal position to run roughshod over state and local interests, to the detriment of the democratic process. In consequence of the policies he pursued in this vein, the Pacific Northwest's electrical energy program was left in disarray for years both during and after his administration.

I recognize that these are serious charges, and it is incumbent upon us to provide you with the facts upon which we base these charges. Principally, I draw from our experience in observing his performance as Administrator of the Bonneville Power Administration from 1972-77. As a sub-agency within the Department of the Interior and now the Department of Energy, the Bonneville Power Administration has always played a pivotal role in the Pacific Northwest's electrical energy policies and programs, and Mr. Hodel's performance and judgment demonstrated in that capacity clearly augurs poorly for his performance and judgment as Secretary of Energy.

Let me begin with the most unfortunate legacy of Mr. Hodel's tenure as the Administrator of BPA. Mr. Hodel is one of the principal architects of what has become -- much to the dismay of its proponents -- the largest construction project ever attempted anywhere in the world, given the ultimate economic costs. I speak, of course, of the role that he played in fostering the construction program of the Washington Public Power Supply System for five nuclear power plants. Although the cost of these five plants was originally set at a total of 4 billion dollars, a 1981 budget projection pegged the cost of completing the plants at 23.9 billion dollars. Of course, the cost of everything has increased during that time and cost overruns on massive construction projects are not unusual, but the magnitude of these cost overruns is staggering. Indeed, cost overruns on the five plants in question averaged almost half a million dollars per hour from 1977 to 1981. At the same time, scheduled completion dates slipped an average of 57 months over the same period, despite the fact that no court decree of any sort imposed any constraint on the construction of these projects.

Of course, by now we all know the unfortunate story that has unfolded. Two of those plants -- units 4 and 5 -- will never produce a single kilowatt hour of electricity, and the total bill to the region ultimately will reach at least 7.4 billion dollars for this colossal mistake in energy planning. Unit 1 has been mothballed and the costs of the units that remain under construction have soared.

What does all of this have to do with Donald Hodel? In the first place, he is largely responsible for the program which launched these particular power plants and their financing arrangements. Although the planning for the initial three units in the WPPSS projects began before Mr. Hodel became Administrator of BPA, the "net billing agreements," which provided a basis for BPA's "financing" of units 1 and 3 were executed while he was Administrator of BPA. In addition, Mr. Hodel was architect of Phase 2 of the Hydro-Thermal Power Program, which contained the plan to build units 4 and 5 and their financing through BPA's substantial assistance. I wish to stress that my testimony concerning BPA's role under Mr. Hodel in committing the Northwest to this disastrous energy program is not based simply upon my belief or the Club's, but is supported by the finding of a federal district judge in a case entitled, Natural Resources Defense Council v. Hodel, 10 ERC 1378 (D. Ore. 1977).

WPPSS 1, 2 & 3: FAILURE OF OVERSIGHT

Perhaps the most striking conclusion to be drawn from the record of Mr. Hodel's role in the financing and monitoring of the construction on the first three units of the WPPSS projects is his apparent disinterest in aggressively pursuing his oversight responsibilities.

BPA contracted with the Washington Public Power Supply System to receive the "project capability" of 100% of WPPSS projects numbers 1 and

2 and 70% of WPPSS project number 3. Project capability, in this instance, did not guarantee BPA any specific amount of power; it only guaranteed whatever power was in fact generated at these projects, if any. The bond offerings by WPPSS included this specific language:

> "Bonneville is [redacted] obligated to pay...the total annual costs of each net billed project, including the debt service on the net billed bonds, whether or not the net billed project is completed, operable or operating and notwithstanding the suspension, reduction or curtailment of project output."

In other words, should there be a suspension reduction, or curtailment, of the project output, BPA would still be required to pay the full cost of the bonds issued to fund the projects but would not receive any power. Due to this contractual arrangement, it was obviously crucial that there be adequate oversight by the recipient of the project capability in order to insure proper and timely construction at least cost.

The "net-billing agreements," whereby BPA and WPPSS effected this arrangement, were executed during Donald Hodel's tenure at BPA. For example, the agreement for WPPSS number 3, dated January 26, 1973, was signed by Mr. Hodel. Section 1 of the agreement notes the authority and responsibility of the BPA Administrator to oversee construction contracts and budgets. Section 4 provides for representation of the Administrator in key WPPSS construction decisions. Section 5(b) allows the Administrator to gain access to important construction information, etc. Section 6 grants the Administrator the ability to approve all bond issues for construction financing of the projects. Section 7 grants the Administrator the authority to disapprove any annual budget or amendment thereto and to inspect any of the projects or related facilities.

Nevertheless, the neglect in performance of these important oversight responsibilities is evident from the dramatic increase in WPPSS construction schedules and costs.

Project	Originally Scheduled Completion Dates	Current Schedule for Completion
1	9/80	1991 (mothballed)
2	9/77	2/84
3	3/82	12/86

Cost in billions

	Preliminary Cost	1st Official Cost	7/77	7/78	Current
1	0.632	1.204	1.650	1.700	5.000 (mothballed)
2	0.397	0.504	1.300	1.445	3.400
3	0.581	1.402	1.600	1.650	5.800

The result of these cost overruns has been profound. At the same time as these costs have increased, BPA has had to include the WPPSS costs in its rates. BPA's average preference rate has gone from 4.13 mills/kwh in 1979 to 18.0 mills/kwh in 1982, a greater than 400% increase in less than three years. The primary side effect of this has been that BPA has been unable to repay the Treasury its long overdue loans for the construction of the Federal Columbia River Power System. Thus, every taxpayer in the country has felt the impact of the WPPSS construction program and the lack of effective oversight during the Hodel tenure.

Although the full magnitude of the overruns did not become evident during Mr. Hodel's tenure at BPA, the crucial neglect in oversight occurred during that tenure. In testimony to the House Water and Power Subcommittee on January 19, 1979, Mr. Sterling Munro, Mr. Hodel's successor as BPA Administrator, said (page 5), "When I came to (BPA) more than a year ago, one of the first problems the staff called to my attention was the difficulties that they had been having over the years in gaining meaningful and effective oversight of the Supply System's net-billed projects." If one reads between the lines, it is clear that Munro was saying that, for years under the previous Administrator, WPPSS had been out of control.

Theodore Barry and Associates was hired by BPA to conduct a "Management Study of the Roles and Responsibilities of Bonneville Power Administration and Washington Public Power Supply System." The TBA report, issued January 1979, is an indictment of the lack of effective BPA oversight during Mr. Hodel's administration;

> "Perhaps the most serious weakness (in the WPPSS situation) is the lack of effective checks and balances upon WPPSS' operations, both from external and internal sources.... Similarly, the study results suggest that the role of the Bonneville Power Administration should be strengthened....-(Its) oversight role has been unclear and marginally effective in the past." (page II-3)

The establishment of such oversight was clearly Mr. Hodel's responsibility.

Among TBA's major findings are:

-- BPA's oversight role was not clearly defined.

-- There appeared to be no focal point or effective mechanism for BPA project engineers to coordinate their oversight activities.

-- Little interaction existed between the senior management of WPPSS and BPA.

-- BPA had not defined the information required to play an effective oversight role.

Similar indictments are made in another report, issued on April 30, 1980, by Decision Planning Corporation, under contract with BPA. The report, entitled "Implementation of BPA Oversight Activities on WPPSS Nuclear Plants 1, 2 and 3" summarizes the BPA/WPPSS relationship, on page I-12, as follows:

> "Information contained in the [net billing] agreements and the [oversight] MOU [Memorandum of Understanding] is too general, and does not provide a clear definition of responsibilities, authority, and accountability relative to

individual functions and issues of oversight management roles."

Finally, during consideration of the "Northwest Power Bill," the Honorable John Dingell requested that the General Accounting Office analyze the BPA/WPPSS relationship. The following findings in that report (EMD 79-105, Sept. 4, 1979) speak loudly of Mr. Hodel's neglect in monitoring the WPPSS projects:

-- "Considering BPA's interest in the output of the WPPSS' nuclear plants, it is somewhat surprising that BPA officials did not insist upon a more direct and positive role in the construction program...." (page II.2)

-- "....although involved in a multi-billion dollar nuclear construction program, BPA has not closely monitored nuclear plant construction...." (page II.13)

-- "Our review, and the work of other analysts, showed that BPA's contracting and monitoring practices do not provide BPA management with adequate opportunities to improve the cost and schedule of WPPSS construction projects. BPA's oversight role, as defined in BPA/WPPSS project agreements, is largely a passive one oriented to budget reviews of actions taken by WPPSS..." (page II.14)

Some fundamental questions remain. During Mr. Hodel's tenure at BPA, there were one or more auditors or thermal project staff persons whose reponsibility it was to report to the Administrator on the WPPSS projects. What were they reporting to Mr. Hodel and what were his responses? Did he encourage them to be aggressive in their audits and oversights or did he discourage such actions? Did he respond to their indications of problems at WPPSS? Did he write WPPSS to express any concerns in response to his auditors' reports? We believe these questions deserve an answer from Mr. Hodel.

WPPSS NOS. 4 & 5: THE $7.4 BILLION MISTAKE

Perhaps the most telling conclusion of the GAO Report was the following: "Of the various problems attributed to the construction program, many seem related to an overly ambitious commitment to nuclear construction on the part of WPPSS and BPA..." (page II.21) The all-out nuclear boosterism which produced the WPPSS 4 and 5 debacle was the central feature of Mr. Hodel's program as the BPA Administrator.

As noted earlier, Mr. Hodel was the architect, catalyst and chief booster for the creation of Phase 2 of the Hydro-Thermal Power Program which conceived and planned for WPPSS units 4 and 5. Indeed, considerable polite coercion was brought to bear on the region's utilities and direct service industrial customers to agree to this program. First, Mr. Hodel advised them that unless progress was being made in developing such a program, he would issue "Notices of Insufficiency" that would terminate its commitment to meet the public utilities' load growth beyond 1982. Second, there was the implication that timely completion of facilities then under construction on the Federal Columbia River Power System could not be guaranteed absent such agreement.

BPA documents, uncovered in the course of federal court proceedings over these matters, showed that Mr. Hodel played the leadership role in bringing this program to fruition. Mr. Hodel in fact issued Notices of Insufficiency even to small utilities that were not technically in danger of insufficiency. Hodel was instrumental in a region-wide public relations campaign, in co-sponsorship with WPPSS and the Public Power Council, to demonstrate the supposed regional need for WPPSS 4 and 5. Recent press reports confirm that utility officials believe that they were coerced by BPA during the Hodel regime into signing agreements for participation in units 4 and 5. Unfortunately, it was these utilities that were largely left holding the bag when units 4 and 5 were cancelled.

REGIONAL POWER FORECASTS: DEAD WRONG

Nor did Mr. Hodel allow the facts to stand in his way in his promotion of this massive nuclear power plant construction program. The underpinning for this program was the regional power forecast Mr. Hodel hepled prepare and incessantly trumpeted during his tenure. For example, the West Group Area Long Range Projection, published April 5, 1974, predicted peak load growth at a compound annual rate for the region of 5.6% during the period of 1974-75 through 1993-94. If this projection had been true, it would have meant that peak demand for electricity would have tripled in this twenty-year period. This projection formed the basis for the plans of BPA and the region's utilities to build additional generation, including units 4 and 5, over the succeeding twenty-year period.

To quote the Idaho Falls Post-Register editorial of November 21, 1982:

> In a speech in 1974 termed "Year 2000 revisited" Hodel said the Northwest would need 50,000 megawatts of new thermal generated electricity by year 2000. There was 17,500 megawatts being used in 1974. That calculated into something like 60 additional nuclear plants being needed in 2000 to meet the energy needs of the Northwest.

Throughout this period, Hodel and his subordinates, working with WPPSS, were holding meetings with the region's public utilities, pushing them to sign up for WPPSS 4 and 5. It is no defense of his role to suggest that somehow these many small public utilities, so dependent upon BPA for technical support, for forecasting support, and for guidance about the best future sources of power supply, should have each reached an independent decision that WPPSS was a mistake. Their faith was in BPA to protect their interests. Their faith was in Don Hodel.

Mr. Hodel should have warned these public utilities about the risks of their WPPSS commitments and about alternatives such as energy conservation which would have been obvious, had he not flaunted his responsibilities under NEPA. But, to again quote Idaho Falls Post-Register editorial of November 21, 1982:

> The utilities' faith was in BPA and BPA was pushing them to sign up for 4 and 5. Each of the utilities, including Idaho Falls, certainly did not have the staffs...(for) research BPA should have been supplying them as its customers.
>
> * * *
>
> It would be very difficult to dismiss Hodel from responsibility in the WPPSS debacle -- that his overestimates did not lead to the overbuilding of WPPSS. As BPA administrator, he would have had to be considered the leader, the guiding light of the energy picture. He had the staff and all of the evidence possible at his disposal. He rejected conclusions that did not coincide with his.
>
> Why shouldn't he be held accountable? He may not categorically be the architect, but he was certainly the main player that propelled WPPSS.
>
> If that qualifies him to be Secretary of Energy, then dismantle the department we should, as President Reagan wants.

Similar projections continued during the entire tenure of Mr. Hodel at BPA. However, later analysis conducted by T.R.W. Systems, Inc., for the Energy Research and Development Administration, was severely critical of the BPA forecasts done under Hodel's leadership. For example, T.R.W. discovered that "the magnitude of this overestimation may be more than twice the 1975 usage of the [region's] primary aluminum industry."

But for present purposes, the point is not that hindsight has shown Mr. Hodel to have been drastically wrong, but that he in fact ignored studies and reports that were available to him at the time of the inflated projections. Indeed, his own senior economist at Bonneville, Myron Katz, was quoted in the Wall Street Journal as saying. "I don't see 5% growth myself." In the edition of November 17, 1975, Katz said that these projections appear "too high." A report issued in September, 1975 by the Environmental Research Center at Washington State University, which had served as a consultant to the Pacific Northwest

Regional Commission, showed a significantly different electricity growth rate than the BPA projections:

1971-1980	1.5%-3.5%
1980-1990	0.8%-2.6%
1990-2000	1.9%-2.5%

The forecasts relied upon unquestioningly by Mr. Hodel were being questioned at that time by the State of Washington's Department of Ecology, in a report in 1975 by the State of Washington's Energy Policy Council and by its Thermal Power Plant Site Evaluation Council, as well as in an Alternative Scenario prepared by the Sierra Club and others in 1977. Similarly, a study commissioned by BPA itself and prepared in 1975 by the Portland, Oregon office of Skidmore, Owings and Merrill (SOM), the architectural and planning firm, demonstrated that over one-third of the load growth projected by BPA in the region could be reduced by conservation practices that were reasonably capable of implementation.

THE S.O.M. CONSERVATION REPORT: SUPPRESSED

Mr. Hodel's handling of this particular report by SOM demonstrates not only the narrow commitment that he has to a single energy source -- nuclear power -- to the exclusion of all others, but also the lengths to which he will go in order to bury facts which conflict with his proposals. In January of 1976, BPA contracted with SOM to study conservation potential, devise strategies to conserve energy and project the effect of those strategies on future power needs for the Pacific Northwest. This study was completed in May of 1976 and was reviewed by BPA and a final report was submitted by July 1976.

However, initially BPA made no public mention of this study, and it was only after it was leaked to the public in August and reporters asked Mr. Hodel about it in early September. Copies of the report were then made publicly available. Even then, the copies were accompanied by a cover letter expressing reservations about the Report. BPA held a press conference to discuss it on October 5th, six weeks later, where its officials downplayed the study's importance. The BPA officials said that the conservation practices called for would be costly, would require drastic changes in lifestyle, and that it should not be used as a forecast to demonstrate that power needs will be less than BPA had forecast. After BPA's press conference, SOM issued a press statement of their own in an attempt to correct the record. The GAO, in a report on August 10, 1978, summed up the whole controversy by observing that the "[e]ffort to realize this potential [of conservation] have been impeded by the hesitancy of BPA and the utilities to actively promote energy conservation...."

HODEL AND NEPA: A PROFOUND FAILURE

The point is not that history has proven Mr. Hodel wrong -- although the magnitude of his mistakes cast considerable doubt on his judgment -- but rather, that Mr. Hodel apparently has his own personal energy agenda which he has shown himself determined to follow, regardless of the facts and regardless of the consequences.

In the course of his administration at BPA, Mr. Hodel showed little regard for the views of others and for the involvement of the state and local governmental entities and interest grups in the important decision-making processes underway by Bonneville and the region's utilities. Rather, Mr. Hodel has consistently followed the "back room" approach to arriving at decisions -- even when they will have profound effects for all sectors of an entire region.

I have already noted that he was the principal architect of Phase 2 of the Hyrdo-thermal Power Program. That program -- which portended and has had drastic consequences for the region -- was arrived at by BPA in meetings held solely with representatives of its utility and industrial customers and without any representation by state or local governments or other interest groups in the region.

As a result, in 1974, the governors of Oregon and Washinton were prompted in an unusual step to write a joint letter to the federal Council on Environmental Quality urging that it intercede to require that BPA prepare an environmental impact statement in order "that the public be given the opportunity to evaluate such future considerations before irrevocable commitments are made." Similarly, the Senate and House of Representatives of the State of Montana passed Joint Resolution Number 63 urging BPA to prepare an impact study on the Hydro-Thermal Power Program.

Although the National Environmental Policy Act clearly required such an impact statement on a federal action such as Phase 2 of the Hydro-thermal Power Program and would have provided a desperately needed means of public consideration of the effects of Bonneville's program under Mr. Hodel, his response to these requests was consistently to thumb his nose at NEPA's requirements. Indeed, immediately after the announcement by Mr. Hodel of the agrement on Phase 2 of the program, the Sierra Club and various other organizations and oficials immediately urged BPA to prepare such an environmental impact statement.

The chronology of what happened thereafter suggests that Mr. Hodel will not allow even federal laws to stand in the way of the realization of his own energy agency. For example, representatives of the Sierra Club and other groups met with him on June 28, 1974 to urge again that he prepare an environmental impact statement under NEPA on Phase 2 of the Hydro-thermal Power Program. Although they received assurances that he would comply with NEPA, months followed without any action whatever being taken in that regard.

On September 25, 1974, these same organizations again wrote Mr. Hodel to inquire whether he had determined to prepare an EIS on the HTPP and whether further implementation of the HTPP, including new contracts with BPA's customers, would be deferred pending the completion of such an EIS. On October 10, Administrator Hodel responded that BPA did not intend to prepare an EIS specifically on the HTPP, but would prepare an

EIS on the vague subject of "whether BPA should continue to participate in programs of interutility cooperation to meet Pacific Northwest electric energy demands." He also stated that BPA did not intend "to discontinue either negotiation or execution of contracts" pending NEPA compliance. In further correspondence in November and December 1974 and January 1975, the Natural Resources Defense Council reiterated its view that this course of action would not comply with NEPA, and in a letter of January 10, 1975, Mr. Hodel replied as follows:

> "We appreciate your concern that contracts to implement Phase 2 of the Hydro-thermal Power Program may be executed prior to completion of the environmental statement on interutility cooperation. You must understand, however, our concern that negotiations formalizing the many complex arrangements must continue on a tight time schedule if this bureau is to play its part in meeting the electric energy requirements of the Pacific Northwest."

On April 1, 1975, BPA issued a draft environmental impact statement entitled "BPA Participation in Regional Interutility Cooperation." Despite the fact that this EIS was in draft form only, on April 8, 1975, Mr. Hodel telephoned the offices of NRDC to advise attorneys there that a power sales contract would be executed with Alumax Pacific Corporation on or about April 18, that the contract was a Phase 2 agreement, and that plaintiffs could challenge it in court if they desired.

Mr. Hodel's disregard for NEPA's equirement was so blatant that it prompted a highly critical letter from the Chairman of CEQ, Russell W. Peterson. In the letter, CEQ Chairman Peterson reviewed the draft EIS prepared by BPA on "Regional Interutility Cooperation," and found it to be "a perplexing document" and "inadequate to comply with the requirements of NEPA and CEQ Guidelines." (p. 3) He concluded that "BPA has taken a much too restrictive view of its obligations," after noting the serious abuse of NEPA that had occurred:

> ....Of particular concern is that the draft contains relatively little detail on the regional program or on BPA's participation; that it presents only the most general, unquantified discussion of environmental impacts; and that in some respects it appears to be written as a justification for the BPA role.

Mr. Hodel responded with a series of speeches in the summer of 1975, which expressed in unequivocal terms his attitude toward NEPA, the preparation of any EIS on Phase 2, and anybody who disagreed with him. In a speech by Mr. Hodel before the Northwest Public Power Association on June 13, 1975, for example, he criticized "those who, ever since [NEPA's] enactment, have used it to obstruct the orderly progress of obtaining the power supply of this region," and he referred elsewhere to those who have sought an EIS on the HTPP as "the prophets of shortage" and "the non-producers who are abusing the National Environmental Policy Act" and as adherents of the "new McCarthyism...that is impressionable, sensation-seeking, and uninformed...."

These same themes were carried forward in an article entitled "The Prophets of Shortage," by Hodel, which appeared in the December 4, 1975 issue of Public Utilities Fortnightly. The lead-in to the article strikes a comparison between the activities of environmental groups and the dynamiting of transmission towers on the Bonneville system in October, 1974. Mr. Hodel again states that the environmental movement "has fallen into the hands of a small, arrogant faction which is dedicated to bringing our society to a halt." Elsewhere they are referred to as "extremists" and "the anti-producers, the anti-achievers."

It finally took the decision of a federal court judge to bring Mr. Hodel's diatribe to a halt. On August 26, 1975, the federal district court in Portland, Oregon held that the Algumax contract which Mr. Hodel had entered into was unenforceable until an EIS had been prepared on Phase 2 of the Hydro-Thermal Power Program. Subsequently, in 1977, the same court issued a decision that a programmatic environmental impact statement was required on Phase 2 itself, before any of it could be implemented. Responding to Mr. Hodel's defense that BPA was not required to review alternative energy scenarios for the region pursuant to the National Environmental Policy Act, then-District Judge Otto Skopil said, "I find this argument totally unacceptable under both the facts and the law." It is clear from reading those decisions that the court found little difficulty in deciding that Mr. Hodel's view of his responsibilities under federal law was clearly erroneous.

Mr. Hodel's penchant for decision-making behind closed doors, without the involvement of other governmental entities or interest groups, was further demonstrated in early 1977, when BPA again assumed the leadership in putting together yet another power program for the region. Again, in a series of secret, closed door meetings between BPA representatives and representatives of utilities and the aluminum industry in the Pacific Northwest, lasting ofer three months, plans were made for the region's energy future -- without seeking to provide notice to or the involvement of state and local governments and other interest groups in the region. It was only after an attorney representing the Sierra Club wrote to Mr. Hodel on February 4, 1977, complaining about the secrecy of thse meetings and their exclusion of the public, that the closed door policy was grudgingly reversed.

Throughout his tenure as Administrator of BPA, Mr. Hodel has demonstrated a readiness to use his auspices as a prominent federal official to intervene in local political issues or in fact to wrest control of those issues away from local bodies and have them decided by BPA through direct intervention. For example, in May of 1976, Idaho's Ada County scheduled an advisory vote on whether the Idaho PUC should approve the construction of a 1,000 mw coal plant for Idaho's power needs. the vote was against the plant and it was scrapped. However, a week before the vote, Mr. Hodel appeared in Boise to speak to the Greater Boise Chamber of Commerce (a group in facor of the plant). He also held a press conference under the sponsorship of a citizen's group supporting the plant. In both forums, he struck a typical pose of saying that if Idaho did not develop enough generation of its own, the federal government would step in.

As another example, in 1979 it was finally disclosed that Bonneville had secretly agreed with Montana Power Company during Mr. Hodel's tenure to build a BPA-owned line to service a Montana power plant under construction, at a time when it was telling local officials that the construction of such a line by BPA was only an "option." The decision by BPA to build the line in lieu of Montana Power's proposed construction effectively removed from local authorities the opportunity to review the siting of the line, as well as any tax revenues from construction of the line. The decision was made without any consultation with local governments, and came to light only after a lawsuit was filed by the Missoula county attorney challenging the decision.

One could go on and on with accounts of these kinds of actions by Mr. Hodel and by BPA under his leadership. However, they bear witness, even in the summary form presented here, to the serious reservations that must be entertained about confirmation of Mr. Hodel as Secretary of Energy. In his record for the Bonneville Power Administration -- and there is nothing in his subsequent tenure in the Interior Department that contradicts this pattern -- he has demonstrated an unswerving commitment for massive nuclear power plant construction programs, even in the face of studies which showed that the plants were not needed and would be too costly. Indeed, he has demonstrated a readiness to use his offices to distort or belittle information which was incompatible with his proposals. More fundamentally, having committed that region to the construction of large nuclear facilities, Mr. Hodel was unwilling to exercise the necessary oversight at BPA in order to ensure that the plants would be operated on a reasonable schedule and in a reasonable magnitude of cost. The ensuing economic catastrophe is something for which he must take a primary share of the responsibility.

Moreover, he has shown himself insensitive to an extraordinary degree to the views of local and state governments and other interest groups where they do not coincide with his own energy agenda. And he has demonstrated a single-minded disregard of the democratic processes in decision-making by federal agencies.

Many voices sought to change this tragic course in the years Mr. Hodel led BPA. Ours was one, but there was a growing chorus of others -- the states, the League of Women Voters, the City Council of Seattle and leaders of a few other courageous utilities. I myself, along with my colleagues, sought to have dialogue, sought to gain compliance with the underlying federal laws which could have opened up a true analysis of the alternative before the region. We were rebuffed again and again. We were patronized again and again. Then, when the federal courts began to respond were Mr. Hodel and his agency would not, we were treated by Mr. Hodel to a public barrage of epithets, inuendos and scapegoating.

Mr. Hodel was there, was in-charge, was at the center of it all. The future course for every supply in the Pacific Northwest was as much his to choose as anyone's. He choose, and in the aftermath it seems altogether inappropriate that the judgements and choices he made then -- amounting to the single most glaringly mistaken energy policy decision of our era -- should be rewarded by placing Mr. Hodel at the top of the whole nation's energy policy apparatus.

We are greatly concerned that his confirmation as Secretary of Energy will mean that the policies and attitudes that he followed in the Pacific Northwest will be writ large for the nation. For that reason, we oppose Mr. Hodel's confirmation.

SIERRA
CLUB

530 Bush Street, San Francisco, California 94108 (415) 981-8634

October 29, 1982

The Hon. Ronald Reagan
The White House
Washington, D.C. 20500

Dear Mr. President;

We respectfully urge you not to nominate Donald P. Hodel, James Watt's number one deputy, to be Secretary of Energy.

America does not need a second James Watt in the Cabinet.

We do not believe most Americans will find Mr. Hodel deserving of their trust in this important position.

Mr. Hodel is not an unknown quantity to us; we had extensive experience with him when he served as the chief energy policy-maker in the Pacific Northwest during the 1970's. We have also closely observed his work in the implementation of Secretary Watt's unpopular policies at the Department of the Interior.

America's energy policy and its environment are too important to be entrusted to an individual whose entire record demonstrates a conspicuous lack of foresight and judgment, hostility to energy conservation and the interests of rate-paying consumers, insensitivity to environmental concerns, and resistance to citizen participation in government decisions. These are the characteristics exemplified by Mr. Hodel throughout his public career.

We can look to Mr. Hodel's past record to understand his views on energy and environmental matters -- views he can be expected to pursue should he be nominated and should the Senate confirm him.

From 1972 to 1977, Mr. Hodel served as Administrator of the Bonneville Power Administration, a unique federal agency which dominates energy policy and energy supply in the Pacific Northwest. Mr. Hodel was the prime architect of BPA's "Hydro-Thermal Power Program/Phase II" -- the program for massive power plant construction in the Northwest, and the failure of which led directly to the WPPSS debacle.

Under Mr. Hodel's Hydro-Thermal Program, the federal Bonneville Power Administration acted as the financial guarantor for the massive power plant construction program of the Washington Public Power Supply System (WPPSS -- commonly known now in the region and on Wall Street as "WHOOPS!"). Mr. Hodel was responsible for utilizing consistently overstated electricity demand projections to mislead the individual utilities of the region into signing financial commitments to underwrite

"When we try to pick out anything by itself, we find it hitched to everything else in the universe." *John Muir* billions of dollars of bonds for the WPPSS construction program. These included not only the region's large utilities, but many small municipal systems and rural electric cooperatives -- each of which under Mr. Hodel's pressure signed contracts obligating them and their ratepayers to pay off the WPPSS bonds regardless of cost-overruns and regardless of whether the plants ever produced power. Despite many credible warnings to the contrary and in direct contradiction to state forecasts, the Hodel/WPPSS program was implemented. Subsequently, as we and many others predicted, the rate of increase in consumer electricity demand fell dramatically, the WPPSS plants recorded enormous cost-overruns, and two of the plants (Units 4 and 5) were ultimately cancelled in mid-construction.

Mr. Hodel's lasting legacy to the people of the Pacific Northwest can be measured in dollar terms. The total amount borrowed to build WPPSS Units 4 and 5 was $2.25 billion. The interest payments on that debt will total $4.75 billion. At least 400 million dollars more will have to be spent for termination expenses. Hodel thus created an unprecedented financial debacle, leaving the utilities and their individual consumers saddled with a debt of at least $7.4 billion dollars for power plants which will never produce a kilowatt hour of electricity.

In pressing for this disastrous program, Mr. Hodel demonstrated views and characteristics which render him clearly unfit to serve as Secretary of Energy --

** Mr. Hodel pushed through the WPPSS financing scheme by applying direct federal pressure on the utilities of the region. He artfully used exaggerated and discredited power demand forecasts to threaten cut-off of federal low-cost electricity supplies, issuing "Notices of Insufficency" to the utilities in a highly publicized campaign to stampede the unwary utilities into WPPSS financial commitments for Units 4 and 5, which were later cancelled.

** In pressing his WPPSS program, Mr. Hodel repeatedly refused to explore and consider alternative energy supply scenarios for the region. Mr. Hodel suppressed BPA's own consultant report, prepared by Skidmore, Owings & Merrill, which concluded that energy conservation was a practical and more cost-effective alternative to meet the region's forecast energy needs at a lower cost to consumers. When the Sierra Club and other citizen/consumer groups produced authoritative consultant studies demonstrating the advantages of these conservation alternatives, Mr. Hodel used the credibility of his office to belittle and reject those findings.

** Under Mr. Hodel, BPA failed to fufill its responsibility for oversight and cost control on the WPPSS power plant construction program, allowing astronomical cost-overruns which directly contributed to the financial failure of several of the proposed plants and added billions of dollars to the debt incurred by the region's utilities.

** As part of his effort to squelch energy conservation options for the region, Mr. Hodel initiated and led a taxpayer-financed public relations campaign against the environmental movement. In a series of speeches he had BPA's publicity staff spread throughout the region, Mr. Hodel referred to environmental groups as "the prophets of shortage," "extremists," "anti-producers," "anti-achievers," "adherents of the new McCarthyism," and "a small, arrogant faction which is dedicated to bringing our society to a halt."

Mr. Hodel's record and legacy in the Pacific Northwest -- as the man who brought the electricity consumers of the region a burden of fruitless debt unrivaled in this country -- amply demonstrates that he is unfit to receive the trust Americans ought to be able to have in high public officials. The Hodel/WPPSS debacle, Business Week reports (October 16, 1982), may lead to bond market defaults which could "rival the aftermath of New York City's fiscal crisis in 1975."

In the Northwest, Mr. Hodel was directly responsible for the most glaringly mistaken energy policy ever imposed on the consumers of any region of our country. As a businessman myself, I feel very strongly that he should not be put in a position in which his decisions would jeopardize the interests of 235 million American energy consumers.

Mr. Hodel is not yet so widely recognized for his work as Secretary Watt's number one deputy. Whereas Secretary Watt has chosen a brash and confrontational public role, frequently demeaning the environmental concerns so widely shared by the American people, Mr. Hodel has been quietly implementing the unpopular policies he and Watt have conceived for the Department of the Interior.

America does not need a man with Mr. Hodel's record guiding national energy policy.

Mr. President, I hope you will understand that we would not have chosen the degree of estrangement and polarization which has arisen between environmental groups such as the Sierra Club and your administration. With only rare exceptions, our repeated efforts to develop dialogue and cooperation with officials of your administration have been rebuffed. Our efforts to work with your administration on those issues where we agree (and there are some) have proven fruitless. Worse than that, the style adopted by some key officials has only exacerbated disagreements we have had regarding substantive issues. The result is a degree of confrontation which has not been true of our relations with any previous administration of either party -- nor, for that matter, our relations with you and your administration during your terms as Governor of California.

As you begin the second half of your term as President, it is my strong hope that this unfortunate confrontation can be eased. That is a hope I know is shared by my colleagues in the leadership of the other national environmental organizations.

For this reason, I hope you will agree that it would not be in the interests of the American people to have the 98th Congress begin with a vigorous fight over the confirmation of a Cabinet nominee who will, we believe, be found unacceptable by a majority of Americans when they have learned more about him.

Sincerely,

Denny Shaffer

Denny Shaffer
President

cc: Under Secretary Donald Paul Hodel
Chairman A. Alan Hill

September 3, 1976

A

To: Ray Foleen
Dan Schausten
Ron Wilkerson
George Tupper
John Ulrich

From: Don Hodel

SOM Conservation Report

Jim Compton, KGW-TV, interviewed me today on another matter. In general conversation afterward he pointed to the "fact" as shown in BPA's "own report" that future loads will be greatly reduced by conservation, meaning nuclear power is unnecessary.

I reacted strongly, denouncing the report as full of holes and its premature release as "unprofessional conduct" which, if it would have come from a lawyer, would have resulted in his disbarment proceedings.

Compton wanted to interview me immediately on film on that subject. I begged off pending completion of our own analysis and a briefing to me because, as I told him, I had not been that close to the matter for the last couple weeks.

When Compton sets up this session we will need to be ready with a posture for all media on the conservation report.

Don

DPHodel:ewb

cc:
Admin. chron. file - A

OREGONIAN October 5, 1976

BPA disputes report stressing conservation

By WAYNE THOMPSON
of The Oregonian staff

Bonneville Power Administration officials disagreed Monday with some of the major conclusions of a special energy conservation study that suggests power-saving measures could alter the schedule, if not the need, for construction of new power plants.

The 325-page document, prepared by the Portland office of Skidmore, Owings & Merrill, an architectural, planning and engineering firm, asserts projects to save energy in the Pacific Northwest would create more jobs than construction projects that generate an equivalent amount of electricity.

The study was commissioned by the BPA to furnish energy conservation information for a massive environmental impact statement the BPA is preparing to explain its role in the region as a power marketing agency.

In discussing seven conservation scenarios that estimate energy savings from 5 to 33 per cent, the Skidmore, Owings and Merrill study says conservation projects, unlike power plant construction, would create jobs that would benefit unskilled labor, thus helping the unemployed.

John Ulrich, a public relations officer for the BPA, said Monday the agency had accepted the report, but at first glance "is skeptical of some of the conclusions.

"This report looks at seven different strategies, but we do not consider it complete in viewing the future electric needs of the region," Ulrich said.

"For example, it does not cover the question of the switchovers from other energy sources to the use of electricity," Ulrich said, citing Pacific Power & Light Co. surveys which indicate more new homes use electricity than when the utility advertised for new customers.

The study also does not reflect conservation already achieved — the residual carried over from the 1973 energy crisis, he said.

Ulrich said anyone reading the report would realize "much of the conservation proposed requires new legislation to create incentives and mandatory features.

"There are some good things in the report that we think are valuable, but we are concerned that people will misinterpret it," Ulrich said.

"The report, for example, shouldn't be construed as a prediction that the need for electricity in the Pacific Northwest will be less than forecast," he said.

The fact that conservation could provide as many jobs as new power generation should not be interpreted as grounds for not building plants, Ulrich said.

The report said future growth required more energy, either by conservation or by building new plants. "Significant conservation helps slow the transition from hydropower to more expensive thermal generation, such as coal and nuclear power plants," the study said.

Ulrich said Hodel would hold a press conference at 9:30 a.m. Tuesday, Oct. 5, in Room 1002 of the BPA Building to discuss the report.

"Even if we embarked on one of the more stringent conservation scenarios, we would still need to build the generation as prescribed in the current hydrothermal plan," he said.

Ulrich agreed that under certain scenarios, plant construction could be slowed down.

"But we're doing that already. To quote BPA Administrator Don Hodel, 'We're already expert in slowing down new plant construction, but we're not expert in getting plants built,'" Ulrich said.

The study covered the BPA's primary power marketing territory: Oregon, Washington and Idaho, plus a fragment of western Montana.

Most of the conservation practices studied would make homes, businesses and industrial processes use less energy to produce the same results. Only minor changes in lifestyle or living habits of individuals were suggested, such as lowering thermostats and turning off lights.

B12 3M THE OREGONIAN, WEDNESDAY, OCTOBER 6, 1976

$2.6 billion, new lifestyle

Conservation labeled costly

A study released this week reports energy conservation will cost up to $2.6 billion, if fully implemented, and will force drastic changes in lifestyle, Bonneville Power Administration spokesmen said in a press conference Tuesday.

Ray Foleen, deputy BPA administrator, said the BPA commissioned Skidmore, Owings and Merrill to study potential measures for conservation of energy as source material for a BPA environmental impact statement.

Some of the measures recommended in the report would require legal action to force the 10 most energy-consumptive industries to reduce energy use. Zoning ordinances would be designed to force people to live in multiple-family dwellings and would discourage single-family dwellings, Foleen said.

"This may be energy conservation," he said, "but it also would be a mandatory change in lifestyle, a major social change."

Other measures would prohibit the sale of existing dwellings until they met standards of insulation and heating efficiency. The same standards would be enforced against commercial buildings by strict building codes.

"It makes sense to have an aggressive conservation program through education and persuasion — which BPA and the power companies have had for the past few years," Foleen said. He endorsed one proposal in the Skidmore-Owings report which would amend building codes to require more insulation and more efficient heating systems.

But he disputed claims that the energy conservation measures would create more jobs than construction of power plants. "The report talks about construction jobs," Foleen said. "Actually, the first three strategies they suggest would result in a net loss of more than 600 jobs. The fourth proposal would result in a net gain of 60 jobs — out of 8,000 in the labor market involved," Foleen said, in answer to questions.

"They estimate all seven strategies, if achieved, would result in a net increase of 820 jobs. Actually, if we have the serious power shortage forecast by the power committee and industries have to close down we will have a serious shortage of permanent jobs," Foleen said, "and the forecasts show that we will need a net of 100,000 new jobs in the Northwest by 1985 just to meet the projected population."

The report was based on the assumption that costs and supplies of electric power, natural gas and oil would remain unchanged as of today, Foleen said. The report was not concerned with actual power need forecasts and will not directly affect the power committee's forecast of a 4.7 per cent annual increase in demand for power for the next 20 years, doubling today's demands by 1995, Foleen said.

"The danger is that the public may assume from the report's estimates of 10 to 35 per cent savings in power that the forecast demand can be reduced by that amount," Foleen said. "The report is intended to suggest means of saving energy at whatever level of power consumption is required in the future," said George Tupper, who heads BPA's energy conservation task group.

'kidmore, Owings & Merrill ARCHITECTS/PLANNERS

October 8, 1976

The purpose of this statement is to respond to questions we have been receiving about our report: "Bonneville Power Administration Electric Energy Conservation Study".

Skidmore, Owings & Merrill was commissioned by the Bonneville Power Administration in January 1976 to:

1) Review electric energy conservation measures, technologies, and practices.

2) Analyze the effects and feasibility of implementing conservation measures.

3) Devise stratagies that could be used to conserve energy in the Pacific Northwest.

4) Project the effect of the strategies on future power needs and the development of the Pacific Northwest power supply system.

SOM completed the work in May 1976 and, after an extensive review by BPA, submitted the final report in July 1976.

The report was prepared as a resource document for the environmental impact statement BPA is developing on its role in the Pacific Northwest power supply system. The report was developed with the assistance of subconsultants in the areas of industrial energy use, residential energy use, and economics.

Energy savings were estimated after an extensive review of existing literature, interviews with BPA's major industrial users, a workshop with the Northwest Public Power Association, and the use of engineering analysis.

Estimates of regional energy savings were developed by calculating savings in typical buildings and industries, and applying these savings to a forecast of 1995 electricity needs. The forecast was supplied by BPA. The savings estimates took into account the effect of existing conservation programs.

Seven conservation strategies were developed. Strategies were arranged according to the type of implementation programs proposed. Strategies relying on educational and incentive programs resulted in a 5-15% reduction in the projected 1995 regional electric energy demand. A 20-33% savings by 1995 resulted from strategies combining educational and incentive programs with building codes, resale requirements, and industrial performance standards.

In summary, the report concludes that:

1) The potential for electric energy conservation in the Pacific Northwest is significant. Conservation could reduce the need for energy in an amount equal to 11 thermal plants by 1995.

2) The effectiveness of conservation depends on the implementation program that is used. The savings potential is greatest under programs that establish energy conservation standards for buildings and industry.

3) Energy savings can be realized using existing technology and conservation techniques.

4) Conservation would result in no significant changes in lifestyle.

5) The energy made available through conservation is 6 times less expensive than energy delivered by investment in new thermal plants.

6) Conservation results in no reduction of jobs.

The report is based on detailed research and technical work. We stand behind its conclusions, and admonish all its readers against the obvious dangers in quoting or excerpting from the report out of context.

David A. Pugh
Partner

DAP:gmc

SEATTLE PI 3-5-75

Power Plants Far Behind Schedule

Associated Press

A dozen thermal power plants now under construction throughout the Pacific Northwest and Rocky Mountain states are far behind schedule, at Bonneville Power Administration official said yesterday.

Don Hodel, BPA administrator, said the delays, ranging from three to 25 months, are due largely to environmentalist pressure. That pressure, he said, means it takes utilities and power companies much longer to get the necessary licenses and permits.

As a result of the construction delays, Hodel and other top BPA officials said, the region faces a huge potential power deficit in the late 1970s and early 1980s.

"The power situation is pretty grim," said Ray Foleen, BPA deputy administrator.

However the estimates of potential power shortages in the coming years were based on what the BPA calls "critical water." Critical water is when the rainfall and spring runoff from melting snow are equal to the lowest level on record-lower even than last year's mark which resulted in power shortages throughout the region.

The potential shortage would be cut at least in half if the flow on the Northwest rivers was equal to the average over the years, however, Foleen said.

Hodel and Foleen spoke at the annual meeting of the BPA's regional advisory council.

The power plant construction delays could mean power shortages in the region averaging two million kilowatts by 1980-81, Hodel said. That amounts to the same amount of power produced by Grand Coulee Dam at its peak capacity.

Hodel said the estimates, grim as he was painting them, are based on the assumption that coal-fired plants are able to get coal totally from strip-mining operations. If strip mining should be abolished, he suggested, the deficit would be even greater.

And while consumer conservation of power is helpful, it "is not a substitute for additional plants." In addition, he said, the BPA thinks many industrial predictions of power needs in coming years "may be underestimated."

The CHAIRMAN. Thank you very much. I appreciate your summarizing some portions of it.

Mr. Sklar.

STATEMENT OF SCOTT SKLAR, POLITICAL DIRECTOR, SOLAR LOBBY, WASHINGTON, D.C.

Mr. SKLAR. Thank you, Senator. I will be much briefer.

The Solar Lobby is the Nation's largest consumer organization supporting conservation and renewable energy.

We generally do not oppose technologies but rather support a balanced approach to energy development for use of a diverse set of renewable energy technology.

Our organization believes that a vote for Mr. Hodel is a vote to continue the Reagan energy policies which has been antithetical to a sane and balanced national energy policy supported by most Americans and most of this Committee.

I will just summarize parts of my testimony.

Mr. Hodel has consistently advocated a centralized energy development approach to the exclusion of other promising technologies. He has stated that solar and other renewable energy technologies are exotic and not feasible until the 21st century.

In a speech in the mid 1970's he said:

> With the possible exception of the fast breeder reactor, the exotic resources, i.e. solar, geothermal, wind, coal deriatives, almost certainly will not be commercially feasible on any scale until the 21st century. In the meantime we must look to conventional energy sources and to nuclear fission to bridge the widening gap.

We in the renewable energy field know his view is not true. I would like to point out that total renewable energy sales in 1982 were over $5.2 billion. That is not exotic. That is not no growth.

Renewable energy sources are already contributing substantially to the Nation's energy mix, more in fact than nuclear power is. Even more promising applications are being developed and can be moved into the marketplace both with and without the assistance of the Federal Government.

One of the points that I feel I must bring out to you, Mr. Chairman, is an example of Mr. Hodel's personal energy policies under Secretary of Interior, Jim Watt. Part of Mr. Hodel's job at the Department of Interior was to oversee the Department's conservation program.

Before his arrival, the Interior Department had made impressive progress in cutting down on energy use in its buildings, which remember that the taxpayers must pay, when he assumed his position as Under Secretary, the Department's program began to deteriorate.

According to a report done by the Subcommittee on Oversight Investigations of the House Committee on Energy and Commerce:

> In early 1982, the Interior Department's energy program stood on the verge of collapse. Throughout 1981, top level Interior Department officials failed to provide any discernible support for energy conservation. In fact, in a response to a January 4, 1982 letter to Secretary Watt requesting copies of memoranda concerning energy conservation issued to bureau heads by Secretary Watt, Under Secretary Donald P. Hodel or Assistant Secretary Robinson West, departmental representatives, conceded that none have been issued.

If Mr. Hodel was in a position to vigorously promote conservation, if he chose to, but he obviously did not, instead he has treated the agency's conservation program with benign neglect. Therefore, it should be understandable when I express grave doubts as to Mr. Hodel's earnest claims of support for conservation.

His often repeated commitment for energy saving programs has been a little more than pleasant sounding rhetoric.

The Solar Lobby believes that the Government needs to begin diverting more of its resources towards promoting the use of renewable energy but apparently Mr. Hodel does not share this concern.

At a recent meeting hosted by Senator Mark Hatfield, I asked Mr. Hodel his views on the extension of the renewable energy business tax credits and on the reauthorization of the Solar Energy and Energy Conservation Bank. He replied that he knew nothing about either of these programs, programs that are essential to development of renewable energy systems.

I would also like to point out that at this meeting which Mr. Hatfield was nice enough to set up with Mr. Hodel to create an honest and open dialog, we asked Mr. Hodel on his view on the Clinch River breeder reactor and at that time he said he didn't know and 9 days later he happens to nicely admit to you and the Committee that he had made up his mind for it.

The CHAIRMAN. He better.

Mr. SKLAR. It is about time.

The meeting between Mark Hatfield, designate Hodel and renewable energy, conservation and environmental leaders brought no commitments to support our key programs. Senator Hatfield advised us that if we were not able to get firm answers from Mr. Hodel, we should prepare questions for this Committee in order to get some specific answers in sufficient detail before he is confirmed.

I hope that members of the Senate Energy Committee will ask for a written reply to these questions compiled by The Solar Lobby and the Sierra Club before his confirmation is brought to the Senate floor.

Even the proponents for Mr. Hodel's nomination should support a complete and thorough review of his views before this man is selected to manage our Nation's energy policy.

I do realize Mr. Hodel will in all likelihood, and despite his faults, be confirmed by the Senate. The Solar Lobby urges the Senate not to confirm this man. Such a vote would be an important signal to the Reagan Administration that this body does not support an unbalanced approach to energy development as he has strongly advocated in the past.

I would like to also point out three things that were mentioned in Mr. Hodel's testimony that were not quite true.

First of all he has said he wants a reasonably confidently managed department without political rhetoric. The firing or the request that Dr. Maxine Savitz move to Colorado was clearly a political move. As you know, she was reinstated by Civil Service.

Second, he wanted to move DOE to a professional and technical department and thus move the weatherization programs to HHS or HUD. That is again a belief that weatherization and conservation programs are not technical in nature and not technically sophisticated.

Since, Mr. Chairman, you have been supportive of these programs as well, you know that is not true. In fact, what would happen if such a move was created, a lot of decisions on national energy policy would not have strong advocates of conservation in decisionmaking processes because they would be pushed over to some other agency and also perceived as not being sophisticated.

Lastly, Mr. Hodel's view that the staff has in fact complied with congressional wishes in DOE. In fact, that is not true. That was the reason why there were congressional attempts to set up staffing levels in certain offices to make sure the programs were carried out.

The fact is Senator Percy has been repeatedly requesting that Assistant Secretary of Conservation and Renewable Energy, Mr. Tribble, submit to him and other members of Congress, his views on renewable energy programs and where he wants to take them and Mr. Tribble has refused again and again to many members of Congress.

In talking to Mr. Hodel about that, he just didn't seem interested. In fact, there is organizational hesitancy to conform to congressional wishes.

My organization does not think Mr. Hodel will ride that tight enough and we have to emphatically oppose him.

Thank you.

[The prepared statement of Mr. Sklar follows:]

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TESTIMONY

of

SCOTT SKLAR
Political Director

Hearing Before

THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

on the Nomination of

DONALD P. HODEL

SECRETARY OF ENERGY

December 1, 1982

Mr. Chairman, I appreciate the opportunity to testify at this hearing and to present the Solar Lobby's view of Mr. Hodel's nomination. While I realize that historically, all cabinet nominations have been confirmed by the Senate, the Solar Lobby believes that in this case an exception should be made. The United States' energy policy is too important to be placed in the hands of any individual without carefully examining his or her overall qualifications. The energy situation in the United States is growing more tenuous. Now is the time to meet the dilemma head on, before we find ourselves in a corner with only one or two difficult technological options to choose from. Yet despite the urgent need for a strong, clear energy policy, the Reagan Administration has shown a repeated, conscious refusal to pay serious attention to the subject of energy, and most particularly conservation and renewable energy. This attitude is epitomized by the stated plans to dismantle the Department of Energy, the agency charged with managing the nation's energy security, thus placing total reliance on the private sector to meet our future energy needs. Therefore, this nomination for Secretary of Energy needs to be taken very seriously and not be skimmed over with very little discussion.

While we are all here to discuss how qualified Mr. Donald P. Hodel is for the position of Secretary of the Department of Energy, we need to look at more than just the skills this man possesses but also the implications his confirmation will have upon the direction of America's energy policy. As I've already made clear, this country needs a broad-based and balanced energy policy -- the question is, is Donald Hodel the right person to mold that policy?

After carefully reviewing his past record with the Bonneville Power Administration and in the Department of the Interior, the Solar Lobby definitely contends that he is not the right choice. Mr. Hodel's background exemplifies a narrow-minded view regarding future energy options. He has consistently advocated centralized coal and nuclear development, to the exclusion of other promising areas. He considers solar and other renewable energy technologies to be exotic and not feasable until the 21st century. This is evident from a 1974 speech in which he said, "with the possible exception of the fast breeder reactor, the exotic resources (i.e. solar, geothermal, wind, coal derivatives) will almost certainly not be commercially feasiable on any scale until the 21st century. In the meantime we must look to conventional energy sources and to nuclear fission to bridge the widening gap." We in the renewable energy field know this not to be the case. Renewable energy sources are already contributing substantially to the nation's energy mix, more, in fact, than nuclear power is. Even more promising applications are being developed, and can be moved into the marketplace, with the assistance of the federal government.

I'd like to mention in greater detail a few of Mr. Hodel's past activities which have led the Solar Lobby along with other concerned groups to come out against Mr. Hodel's nomination. As the head of the Bonneville Power Administration, Mr. Hodel led that agency into one of the largest financial fiascos in recent memory, due in large part to his refusal to consider alternative proposals to the construction of a number of new power plants. In addition, he suppressed a report that concluded that conservation was far more economical for the Bonneville Power Administration than their nuclear program. And because of his failure to manage the construction of the nuclear power plants carefully enough, two of the plants had to be cancelled due to a drop in energy demand projections and huge cost overruns. Such poor judgement is not something the next Secretary of Energy should possess.

Another troubling example of Mr. Hodel's personal energy policy is what he did as Undersecretary of the Interior under James Watt. Part of Mr. Hodel's job at the Department of the Interior was to manage the department's conservation program. Before his arrival, the Interior Department had made impressive progress in cutting down on energy use in its buildings. Yet as soon as Mr. Hodel assumed his position as Undersecretary of the Interior, the Department's conservation program began to deteriorate. According to a report done by the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, "In early 1982, the Interior Department's Energy Conservation Program stood on the verge of collapse. Throughout 1981, top-level Interior Department officials failed to provide any discernible support for energy conservation. In fact, in response to a January 4, 1982 letter to Secretary Watt requesting copies of memoranda concerning energy conservation issued to bureau heads by Secretary Watt, Under Secretary Donald P. Hodel, or Assistant Secretary Robinson West, Departmental representatives conceded that 'none (have been) issued.'" Mr. Hodel was in a position to vigorously promote conservation if he chose to but obviously did not; instead he treated the agency's conservation program with benign neglect. Therefore, it should be understandable when I express grave doubts as to the substance of Mr. Hodel's earnest claims of support for conservation. His often repeated commitment to energy saving programs has been little more than pleasant-sounding rhetoric.

After all, Mr. Hodel shares the Administration's belief that the private sector should be relied upon solely (with (minor) government assistance) to solve our nation's energy needs -- an idea that the private sector itself does not even accept. The private sector certainly believes that there is a role for the government to play in the development of energy supplies for this country. Be it through oil prospecting, or renewable energy technology research -- a need is seen for government involvement. The Solar Lobby believes that the government needs to begin diverting more of its resources toward promoting the use of renewable energy, but apparently Mr. Hodel does not share this concern. At a recent meeting hosted by Senator Mark Hatfield, I asked Mr. Hodel for his views on the extension of the renewable energy business tax credits and on the reauthorization of the Solar Energy and Energy Conservation Bank, he replied that he knew nothing about either of these programs, programs that are essential to the development of renewable energy systems.

This simply proves what should by this time be obvious; Donald Hodel does not have the broad-based, balanced energy policy approach that is needed by the new Secretary of Energy. With his old-fashioned conception of solar energy and a trail of past decisions that leads us to believe he will continue thinking along very narrow lines, Mr. Hodel is clearly not the best person for the job.

The meeting Senator Mark Hatfield sponsored between Secretary-designate Hodel and renewable energy, conservation and environmental leaders brought no commitments to support our key programs. Senator Hatfield advised us that if we were unable to get firm answers from Mr. Hodel, we should prepare questions for this Committee in order to get some specific answers with sufficient detail before he is confirmed. I hope that Members of the Senate Energy Committee will ask for written replies to these questions compiled by the Solar Lobby and the Sierra Club before his confirmation is brought to the Senate floor. Even the proponents for Mr. Hodel's nomination should support a complete and thorough review of his views before this man is selected to manage our nation's energy policy.

Nonetheless, I do realize that Mr. Hodel will, in all likelihood and despite his faults, be confirmed by the Senate. After all, we assume that even if he is not confirmed, the Administration will surely find another individual that personifies its unrealistic view of energy issues. The Solar Lobby urges the Senate not to confirm this man. This would be an important signal to the Reagan Administration that this body does not support an unbalanced approach to energy development as he has strongly advocated in the past. Thank you.

Questions for a Formal Reply by
Secretary of Energy-Designate Donald P. Hodel

Energy: Policy Views

1. Foreign government spending on renewable energy R&D is increasing dramatically, and is oriented toward taking U.S.-developed technologies and aggressively pushing them to commercial readiness. Are you prepared to:

   A. Permit foreign countries to undermine U.S. leadership in renewable energy through government-funded R, D&D?

   B. Follow the advice of the Solar Panel of the Energy Research and Advisory Board in implmenting a balanced program of near and long-term activities to continue the development of promising renewable energy technologies?

2. Will you support the nation's weatherization program at 1982 levels and develop a ten-year plan for specific goals of this program?

3. Will you support the extension of the renewable energy business tax credits and the reauthorization of the Solar and Conservation Bank?

Energy: Past Management

1. As Undersecretary in the Department of Interior, what actions have you supported to strengthen the Department of Interior's program of energy conservation in buildings?

2. The General Accounting Organization has stated that BPA's oversight role was very weak. As Secretary of Energy your agency will again have oversight responsibilities for many projects. What will you do to insure that the WPPSS experience doesn't happen again and would you specifically describe how your decision-making process will be carried out at DOE?

3. Were you aware of the analysis by the Environmental Research Institute at Washington State University, published September 1975, titled Energy Projections for the Pacific Northwest?

   A. Didn't you know that this study, made at the request of the Washington State Energy Policy Council, concluded that the growth of energy consumption between 1971 and 1980 would be only 3.5 percent, as opposed to BPA's prediction for the same period of 4.7 percent?

   B. Did you consider this study in determining the need for WPPSS 4 & 5?

C. Didn't this information give you second thoughts about pushing ahead with five nuclear plants by WPPSS and four more by private utilities? If not, why not?

D. Were not these forecasts much more accurate than any of the forecasts you relied on?

4. I understand that the Bonneville Power Administration had the opportunity to break its commitment to sign a contract to provide power to an aluminum plant that Alumax wanted to build in Umatilla, Oregon. How do you justify what seems to be contradictory actions where on one hand you were predicting massive shortages of electric power for the Northwest and at the same time were willing to sign a contract with a company which would use enough electricity to supply a city of 94,000 residents?

Energy: Judgement

1. During the spring of 1976, your agency was having the firm of Skidmore, Owings and Merrill do a study of energy conservation. This study was first completed in May, 1976. It said that up to one third of the future power needs of the region would be reduced through energy conservation investments. Did you share this information with your customers and encourage them to develop conservation programs?

   A. Was the report made available at the time the utilities were considering participation in the WPPSS project?

   B. What was BPA's response to this conservation study?

   C. Did you attempt to squelch a study which concluded that a conservation program in the BPA region would be more economical than the nuclear development program you advocated.

2. The Bonneville Project Act of 1937 (BPA's enabling legislation) states that power is to be provided at the lowest possible cost to the consumer. Is that what has happened with BPA's involvement with the WPPSS projects? Are consumers getting the lowest possible power rates or are the WPPSS projects more expensive than other similar projects around the country?

3. The front of the bond statement for WPPSS plants 1,2 and 3 contains the following quote:

> "Bonneville is obligated to pay...the total annual costs of each net billed project, including the debt service on the net billed bonds, whether or not the net billed project is completed, operable or operating and not withstanding the suspension, reduction or curtailment of project output."

A. Are you aware of any other arrangement in the U.S. where a federal agency has entered into such a contract?

B. Given this arrangement, wasn't it of the highest importance that BPA ensure that these plants were brought in on schedule and within cost?

The Solar Lobby

NEWS RELEASE

1001 Connecticut Avenue NW
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November 18, 1982
Contact: Scott Sklar

SOLAR LOBBY ANNOUNCES CAMPAIGN TO "PULL THE PLUG" ON HODEL

WASHINGTON, D.C. President Reagan has nominated Donald P. Hodel, James Watt's Undersecretary at the Department of Interior, to become the new Secretary of Energy. Mr. Hodel is serving as Acting Secretary of Energy pending confirmation by the Senate.

The Solar Lobby is asking its 53,000 members to send copies of their utility bills to their Senators as a protest against the Hodel nomination. "The Lobby intends to actively oppose his nomination," says Solar Lobby Political Director Scott Sklar. Adds Sklar, "We have no choice but to oppose a man who was responsible for the dramatic increase in utility bills in the Northwest as a direct result of his decisions, as Administrator of the Bonneville Power Administration, to ignore conservation and renewable energy applications and pour billions of dollars into uneconomical nuclear power plants that were ultimately cancelled."

The Solar Lobby expects that thousands of utility bills will be sent to the Senators who must confirm Hodel's nomination. Lobby members have been informed of three reasons to urge their Senators to actively oppose the nomination:

- As Administrator of the Bonneville Power Administration, Hodel pursued an uneconomical and unbalanced energy policy
- Hodel has been antagonistic toward consumer-interest groups, and has demonstrated an unwillingness to accept the need for a broad-based approach to energy development
- Hodel holds radical views which translate themselves into his strong support of conventional, mostly finite fuels, as the basis of a national energy plan

"Although Congress has never rejected a Cabinet-level nomination," says Sklar, "the Senators must hear from the thousands of renewable energy consumers and businesses that endorse renewable energy development and reject Mr. Hodel's radical orientation."

-30-

Seattle Post-Intelligencer, Saturday, November 6, 1982

Seattle Post-Intelligencer
THE VOICE OF THE NORTHWEST SINCE 1863

SOLAR LOBBY

P-I EDITORIALS

Hodel shouldn't get energy job

The U. S. Senate should reject President Reagan's nomination of Donald Hodel yesterday as Secretary of Energy. The president made a mistake. Hodel is the wrong man for the job, and his record proves it.

As administrator of the Bonneville Power Administration from 1972 to 1978, he was instrumental in saddling the electric ratepayers of this region with billions of dollars worth of debt to pay off loans for building nuclear powerplants, at least some of which will never produce a single kilowatt of power.

When responsible people questioned the accuracy of blue-sky predictions of electricity demand in the Pacific Northwest, Hodel responded by calling them names — "no-growth advocates" and "prophets of shortages." In a 1975 article, he said the environmental movement "has fallen into the hands of a small, arrogant faction which is dedicated to bringing our society to a halt."

Sticks and stones, Mr. Hodel. Your critics were right and you were wrong. The demand for electrical energy turned out to be nowhere near what you thought, and we in the Pacific Northwest will be paying the price for years and years. If there is any justice, the last thing you should get is the reward of a Cabinet office.

Tradition has it that a president is entitled to his choice of Cabinet officers unless something extraordinary in an appointee's past disqualifies him. That is the case with Donald Hodel, who is largely responsible for the world's champion money-wasting boondoggle.

The CHAIRMAN. Thank you very much.

Mr. Pomerance.

STATEMENT OF RAFE POMERANCE, PRESIDENT, FRIENDS OF THE EARTH, WASHINGTON, D.C.

Mr. POMERANCE. Thank you, Senator McClure.

I will be brief and attempt to summarize my remarks.

Friends of the Earth is a national environmental organization with more than 30,000 members.

Our position on the Hodel nomination rests in the few guidelines that we have established for ourselves in which we think he ought to meet before he is approved. I will briefly review those and then I would just like to read a couple pages of my testimony on a couple of topics.

Let me just say that I had hoped the President would make—Cabinet choices are in part political symbols. I feel and the Friends of the Earth felt he had an opportunity to signal the country that he was going to change his environmental and energy policies but instead he plucked Secretary Watt's No. 2 man and put him in the Cabinet as well and we found this very discouraging. As I talked to people around the country, I think that remains one of the major aspects of this nomination, that it sent an unfortunate signal to the country that they can expect not less of Secretary Watt type policies but more.

The criteria we have developed are based both on the experience with Secretary Edwards and some of the most important problems facing not only the country but the world in terms of energy problems.

First, obviously and he said this morning he was willing to carry out the law of this committee, Congress passed laws and they were enacted. Anyone would say that. We question whether the solar and conservation bank, that the statute enacting that was carried out under Secretary Edwards' administration or whether the whole program was scratched and we wonder what happened to the energy efficiency appliance standards which also seemed to end up in the closet.

Second, we believe very strongly and much of the discussion this morning was on the subject of restoring some balance to the programs at DOE. We have seen the solar and conservation programs decimated while the nuclear power programs have actually increased, yet we look at our energy history in this country over the past few years, what has made the difference? Gains in efficiency primarily and in conservation those are the cheapest, fastest ways to reduce our dependence on imported oil and I am sorry this administration has not generated much leadership in that area.

Third, something that got no attention this morning and is rather important, the role of the Secretary of Energy as an environmentalist. When DOE was constructed, it had an Assistant Secretary for the Environment, Ruth Cluson, was the first such person. She had under her jurisdiction and part of it was under research but it was a CO_2 program. This committee has held some hearings on that subject. It was a tiny program. It was $12 million.

In Carter's last budget, they wanted to go up to $16 million. This administration has cut that program to $8 million.

There is no more serious problem facing the international community and the fossil fuel cycle over the next couple of decades from an environmental standpoint than the growth of CO_2 in the atmosphere and other trace gases which will have the same effect on climate.

The concensus is out there in the scientific community and yet Secretary Edwards' reputation in this area was simply ignore the program. He fired the guy who was the head of it and policy analysis was not in the cards at DOE on this subject and yet if you are to formulate an energy policy for the future, you have to take the CO_2 issue into account. It is also related to the acid rain problems. Acid rain is a product primarily of fossil fuel combustion and many of the atmosphere constituents that relate the CO_2 problem and the acid rain problem work together.

Yet, to me, here we have a major problem with the Canadians on acid rain, the ecosystems of the Northeast part of this country, the Southeast, are under severe pressure from acid rain, and yet the administration is sitting on its hands. Its excuse is it is doing research.

What I had hoped was we would have a nominee who was concerned, who would be a voice in the Cabinet on these issues. His record, he worked with Watt for 2 years, I think he agrees with him. He is a different personality. We all know that and we approve of that.

He will be easier to get along with, and I think I will see him more often, but the key issues are not personality, they are policy issues. Here again, I think, we will see rather at best that nothing will happen and perhaps worse things.

Finally, we would urge the committee to require another look at the whole leasing problem. I think on two issues related to leasing this morning, you did not get the whole story. I do not have it either right now but there are a couple of places you can get it.

One, I was appalled by the statement that it seemed that what was happening at the Office of Surface Mining was fine. As you know the environmental community has been very upset with the deinstitutionalization, and I do not know if that is the proper word but the chasing out of civil servants, the demoralization that is going on in key agencies. One of them is OSM, very much under Mr. Hodel's jurisdiction.

For him to say what they have done is OK, to me, that was an inadequate response. I got from my office this report done by the National Wildlife Federation. It is 350 pages on what has happened down there to the Office of Surface Mining. I think before approving this nomination a close look at Mr. Hodel's comments this morning and the reality of what is going on in OSM is a worthy venture.

Finally, on the coal leasing story, again, I would look at that hearing that took place in the House on July 15. My understanding is Under Secretary Hodel was the key player in all this. He does not remember. He was the major player in the whole coal leasing. It was the largest coal leasing sale ever in U.S. history.

A major political problem, much discussed in the press, and for him to come forward and I think he is going to come forward more, that is what it sounded like, but I would certainly hope the committee would clear up exactly what his role was and exactly how he managed to change the leasing rules during that process.

I am no expert on it and I do not claim to be but I want to raise that issue, because how he ran that might indicate how he will run other things at DOE.

Thank you.

[The prepared statement of Mr. Pomerance follows:]

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STATEMENT OF RAFE POMERANCE

PRESIDENT OF FRIENDS OF THE EARTH

BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

DECEMBER 1, 1982

ON

THE NOMINATION OF DONALD PAUL HODEL
TO BECOME SECRETARY OF ENERGY

Chairman McClure, Members of the Senate Energy Committee, we appreciate this opportunity to testify on the nomination of Donald P. Hodel to be Secretary of the Department of Energy.

Today we appear before you midway through President Reagan's term of office. The position which is being considered is an important one, but unfortunately this Administration has demonstrated a serious lack of understanding regarding major energy problems. In the field of energy and environmental policy, this Administration has often taken an extreme and confrontational approach. It has chosen ideology over both reason and law, yet has been highly inconsistent in the application of its stated principles.

Let me suggest that we review the performance of the Administration thus far, the primary qualifications which Mr. Hodel brings to the job, what his track record has been, what we have learned by meeting with him and suggest some guidelines to review your decision by.

In the now-famous words of James Watt, the Administration has used the budget process as an excuse to make policy, largely bypassing debate in a public forum over a range of energy issues. At the Department of Energy, this has meant crippling the government programs which supported conservation, efficiency, and the development of renewable resources, all in the name of bringing free-market forces to bear in energy policy. As Members of this Committee and the full Senate review Mr. Hodel's record and consider his suitability for the position, we ask that you evaluate his judgement about which elements he feels are key to a well-balanced energy policy.

Solar energy and conservation programs have been cut by nearly $1 billion since this Administration came into office. We feel it is nothing short of hypocritical then, that the Department's commercial nuclear programs, with $40 billion in subsidies over the last quarter century, remain absolutely unscathed. The ideas of balance, cost-effectiveness, and conservation seem to have been thrown out the window at the Department of Energy.

With a $200 billion deficit looming in FY 83, we may see less regulation at the NRC, less research and enforcement at EPA, fewer student loans or school lunches, but early budget projections anticipate $1.8 billion in new nuclear subsidies- a last ditch effort to revive an industry suffering from an acute attack of market forces. As all other areas are forced to retrench, the $1.8 billion figure represents a dramatic increase over the 1983 budget request.

Let us turn now to Mr. Hodel's primary qualifications. They are two: first that he has significant experience in energy administration management as Administrator of the BPA and two, that as a member of the Reagan Administration, he is intimately familiar with current policies and persónnel and could " hit the ground running".

How well does Mr. Hodel's past speak for or against him? There is a strong linkage between both jobs he has held and the one he seeks confirmation for today. He would be an administrator responsible for making energy projections, formulating energy policy and negotiating contracts for the Department of Energy.

My colleagues will speak, I expect, in greater detail about Mr. Hodel's performance as BPA Administrator, but in brief we believe his tenure there to be a poor recommendation for the position he seeks. Mr. Hodel used scare tactics to persuade municipalities into borrowing heavily to finance unwise investments in nuclear power. He suppressed a report which would have showed the public just how unwise those investments were, and when his analysis was criticized, Mr. Hodel lashed out at the questioners as "dedicated to bringing society to a halt" and threatened that "homes will be cold and dark or factories will close or both" if the environmentalists were listened to. He told the communities that his own official projections were "decidedly too conservative" and that the communities should borrow millions of dollars to invest in nuclear facilities.

Today, the angry residents of the Northwest have been caught holding the bag. If our government continues to show the same blind faith in nuclear power, we too will be stuck with the bill when the Hodels, Edwards, and Reagans are long gone.

We should certainly know what he would do differently the next time around. What did Mr. Hodel learn from his experience? Will he use his position to push supply-side energy policy on the country whether it is the least-cost strategy or not? I believe that Mr. Hodel owes it to the American people to give an accounting of the lessons he learned in the greatest financial catastrophe yet to befall a utility system. We cannot afford another such mistake.

We should also know whether the legitimate observations of the environmental community will be listened to this time, whether the Administration will practice what it preaches about the free-market and whether any attention is to be paid to the environmental ramifications of their energy policy, as with carbon dioxide buildup and acid rain. Mr. Hodel has indicated that he feels the WPPS debacle is an issue of the past, so it might be appropriate to turn to his other qualification , his role as James Watt's right hand man at the Interior Department.

A great deal of energy policy is being made today at the Department of Interior. Despite depressed markets and immature technologies, the Reagan Administration has put all energy leasing activity on the "fast track". This goes for oil and gas (leased uncompetitively, at a loss of $700 million to taxpayers in the next five years, CBO estimates) coal, oil shale, and tar sands for a non-existent synfuels market, geothermal wells, and the massive OCS leasing program.

Time magazine, the New York Times, the LA Times, and other papers have chronicled the giveaway of taxpayer resources on a scale unparalleled in this century. Energy resources we own are being transferred into the hands of huge multinationals for pennies on the dollar of their true worth.

In addition to holding the position of Undersecretary, Don Hodel has been the Chairman of the Minerals Management Service Board, and by the description of his own staff has had virtual veto authority over agency actions and regulations. He has been in charge of new coal leasing regulations which reintroduce legal land speculation, geothermal leasing, new onshore leasing rules, OCS lease procedures, and virtually every aspect of the Reagan giveaway program. Interior Department officials have testified that it was Don Hodel, and not James Watt, who authorized possibly illegal changes in coal bidding procedures and OK'd the Department's role in the disatrous Powder River coal sale.

As the new head of DOE, he will be responsible for setting coal leasing targets and writing the diligence rules, or anti-speculation provisions of the contracts. The American public is as yet largely unaware of the massive transfer of their resources now underway. Just as the northwest utility ratepayers found out, the American people will one day demand to know how such a thing could happen. It is happening, quite simply, because among others, Don Hodel, James Watt, and Ronald Reagan are orchestrating the greatest giveaway of our time.

In the conservationists' meeting with Mr. Hodel, he failed to allay our many concerns. He did not indicate any displeasure with the current imbalances in the Energy Department and did not indicate a willingness to re-evaluate the emasculated solar and conservation programs He did say that he would be able to discuss further cuts at DOE during his confirmation hearing today. Asked at one point whether he had an open mind with regard to nuclear reprocessing facilities, he replied that he couldn't say if he had an open mind until he learned whether the President had an open mind.

Our testimony today has been designed to draw attention to administration energy policy and its failures to date, and to review Mr. Hodel's primary experience prior to this nomination. We believe that the President should be entitled to select his Cabinet members. But we also believe that because the Senate is given the role of advising and consenting to these choices, it is also fair that the prospective Cabinet member be willing to make certain commitments to Congress during the confirmation process.

Will Mr. Hodel:

- * Agree to carry out the law, even if for policy reasons he does not agree with it, and that if he wishes to change the law that he make the request of Congress. The Administration has failed to do so in a number of energy policy areas, including the administration of the Solar and Conservation Bank and the application of appliance efficiency standards.
- * Agree to restore balance to the Energy Department Budget request giving solar and conservation programs their fair share of the energy pie.
- * Agree to take action to mitigate the environmental damage incurred by his energy policies, i.e. atmospheric pollution as evidenced by CO_2 buildup and the presence of acid rain.
- * Agree to re-evaluate his role in government leasing policies and to establish demand driven leasing levels which will not flood depressed markets.

In addition, the Committee members must be satisfied that Mr. Hodel is not responsible for the debacle of the Washington Public Power Service System and mismanagement at the Bonneville Power Administration.

Mr. Hodel should answer all of these questions to your satisfaction before receiving your vote to confirm him.

The CHAIRMAN. Thank you.

Mr. Nogee.

STATEMENT OF ALAN J. NOGEE, CLEARINGHOUSE COORDINATOR OF THE JOINT ENERGY PROJECT OF ENVIRONMENTAL ACTION AND ENVIRONMENTAL ACTION FOUNDATION

Mr. NOGEE. Thank you, Mr. Chairman. My name is Alan Nogee. I am the clearinghouse coordinator of the Joint Energy Project of Environmental Action and Environmental Action Foundation.

Environmental Action with 26,000 members, organized the first Earth Day in 1970 and has been active since then in promoting citizen involvement in environmental and energy issues.

Environmental Action Foundation provides technical and organizing assistance to a nationwide network of thousands of consumers, senior citizens, labor and citizen groups as well as local governments, actively working on utility issues in particular.

We must strongly oppose the nomination of Mr. Hodel to head the Department of Energy.

Mr. Chairman, we have had considerable discussions today about Mr. Hodel's particular responsibility for certain actions at BPA as opposed to his reliance on what was referred to as the conventional wisdom. The fact remains that we have a public record now established over nearly a decade where we have considerable controversy over energy choices and we are now capable of judging the wisdom of future choices on the basis of that record.

At what point, Mr. Chairman, would one suggest that we stop promoting those who have relied simply on the conventional wisdom and excluded voices that have been promoting alternatives which have proven in the past decade to have been more accurate and more reliable?

The energy issues that confront us today are largely the same issues that confronted the Northwest during Mr. Hodel's tenure at BPA.

What are our future power needs? How can our real energy needs be met with equity and efficiency? What will be the impact on our families, our communities, our workplaces and our environment on different means of trying to meet these needs?

The Department of Energy today is in the process of addressing these very questions. One of the first tasks of our new Energy Secretary will be to review the analysis and recommendations of a 10-month-long investigation into the condition of the electric utility industry. That investigation is being conducted by an interagency task group chaired by J. Hunter Chiles, the DOE Director of Policy Planning and Analysis.

The "problems" identified by this working group and its approach to resolving them have a terribly familiar ring. The working group's process and conclusions bear an ominous resemblance to the processes and conclusions followed by Mr. Hodel at Bonneville.

The draft recommendations of the working group reflect precisely the assumptions that underlay the policies Mr. Hodel imposed on the Northwest, to justify construction of the Washington Public Power Supply System plants, especially numbers 4 and 5 in 1976.

We are all by now familiar with the consequences of that disastrous decision, a $7 billion debt for plants that will never produce power.

We have yet to hear Mr. Hodel repudiate the logic of that decision or the process that led him to it. We have yet to hear concrete steps that Mr. Hodel would have the Energy Department take to insure that the WPPSS debacle will not be repeated for the Nation as a whole.

It is critical that this committee examine the parallels between Mr. Hodel's actions at Bonneville and the Administration's current direction in energy policy as revealed by the interagency working group.

Both assume substantially higher demand projections then alternative, reliable voices. Both propose circumventing market forces to remove market constraints on financing new power plant construction.

For example, the Congressional Research Service recently reached a very different conclusion than those proposed by the working group. The CRS perceives no reserve inadequacies in the electric regions through the 1990's and sees several areas as seriously overbuilt, questioning existing incentives to new construction such as the deferral of Federal income tax on portions of dividends which are reinvested in utility stock, the CRS report states:

> Given that shortages are unlikely, there is a question as to the propriety of such incentives since they may be diverting funds to the utilities that might best be used elsewhere in the economy. In other words, if shortages are unlikely, why provide incentives for the construction of electrical capacity.

Mr. Hodel's critics have been making the same point for many years. They were excluded from BPA's decisionmaking process. It is easy for Mr. Hodel today to promise he will listen to environmental and consumer groups. Will he see the experts representing alternative prospectives or funding to provide adequate input into the working group's analysis and recommendations and to actual policy planning in the local, States and regions? We see no evidence to date to indicate he will.

Others dispute the basic analysis and prescription of those who would rely simply on high demand projections and new financial incentives for new construction.

For example, J. Kennedy, executive director of ELCON, a group of large industrial electric users that includes companies such as General Motors, U.S. Steel, Union Carbide, DuPont and 14 others, has commented:

> At the present time, we're not terribly pleased with what we see happening at DOE. We are not convinced that the predicates on which he is building his proposals are correct—Chiles may be convinced of his facts, but it's not his money. I realize that Westinghouse and Bechtel would like to see lots of plants built, because they're in the plant building business. We're not.

It may be worth noting that both Bechtel and Westinghouse were instrumental in the formation of the interagency working group and Mr. Chiles who heads the working group is a former Westinghouse strategic planner.

The working group is proceeding to create still more new incentives for new plant construction. We believe that the recommendations under consideration will put more distance between the decisionmakers and those who pay the cost of those decisions.

For example, proposals to move planning bodies or regulatory commissions to the regional level. Proposals to allow utilities to choose between regulation by their State or by the Federal Energy Regulatory Commission. Proposals to deregulate new generating facilities selling wholesale power.

These reforms could radically change the relationship between ratepayers, utilities, the State and Federal governments.

Mr. Hodel will have the responsibility of reviewing the analysis and recommendations of the working group before they go to the Cabinet council and ultimately to the President.

Unfortunately, it appears to us that Mr. Hodel has been nominated precisely because of his accomplishments in selling the unneeded and disastrous WPPSS plants, not in spite of it.

We heard this morning that Mr. Hodel continued to rely on that "conventional wisdom" in citing the 3-percent forecasted growth rates promulgated by the National Electric Reliability Council. There are alternative voices. We have yet to hear them included in Mr. Hodel's agenda.

If Mr. Hodel were a changed man, we suspect the President would have likely nominated someone else. We urge you to keep the potentially drastic changes in utility policy now looming on the horizon in mind as you consider Mr. Hodel.

Mr. Chairman, imagine the head of a regional branch of a large corporation making a $7 billion mistake, nearly driving his region into bankruptcy and then being promoted to run the national office of that corporation. Is that what the Reagan administration means by accountability and efficiency in Government? We cannot afford BPA's Northwest energy plan on a national scale.

Let me finally suggest with all respect, Mr. Chairman, that those who support the long term continued developments of nuclear energy might be those who have the most to lose by financing schemes and relying on outdated forecasts that result in disasters like WPPSS. We suspect that the Northwest will be the last region to order a new nuclear plant.

It is in the interest of all of us to turn to new sources of information and new input in our decisions. We urge you to reject Mr. Hodel's nomination.

Thank you.

[The prepared statement of Mr. Nogee follows:]

Testimony of
Alan J. Nogee
before the
Senate Committee on Energy and Natural Resources
on behalf of
Environmental Action
and
Environmental Action Foundation
December 1, 1982

My name is Alan Nogee. I am Clearinghouse Coordinator of the joint Energy Project of Environmental Action and Environmental Action Foundation, and am speaking today for both organizations. Environmental Action, with 26,000 members, organized the first Earth Day in 1970, and has been active since then in promoting citizen involvement in environmental and energy policies that affect health and safety in our communities. Environmental Action Foundation provides technical and organizing assistance to a nationwide network of consumer, senior citizens, labor and citizen groups, as well as local governments, actively working on energy issues.

We must strongly oppose the nomination of Mr. Hodel to head the DOE. As all of us know, there is no consensus of expert opinion regarding energy questions. In the absence of consensus, however, the views and actions of organized citizens working through institutions at the local and state level become absolutely crucial for developing a rational and durable energy policy. Policymakers must thus be judged on two counts: first, by the vigor with which they pursue maximum participation in developing and implementing concensus around policy options; and second by the consequences of their administration of those options.

The impact of energy choices on employment, income and security has been the subject of intense public debate for the past decade. A public record has been clearly established. We are now capable of judging the wisdom of future choices on the basis of that record. It is on the basis of his record in the Northwest that Mr. Hodel must be judged to have failed. It is a failure which we cannot now afford to repeat on a national scale.

The energy issues that confront our national economy are largely the same issues that confronted the Northwest during Mr. Hodel's tenure at the Bonneville Power Administration (BPA). What are our future power needs? How can our real energy needs be met with equity and efficiency? What will be the impact on our families, our communities, our workplaces and our envirnoment of different means of trying to meet these needs?

It happens that the Department of Energy is on the verge of putting forward some proposals addressing those very questions. One of the first tasks of the new Energy Secretary will be to review the analyses and recommendations of a ten-month long investigation into the condition of the electric utility industry. That investigation is being conducted by an inter-agency working group chaired by J. Hunter Chiles, DOE Director of Policy, Planning and Analysis.

The problems identified by this working group, and its approach to resolving them have a terribly familiar ring. The working group's process bears an ominous resemblance to the process followed by Mr. Hodel at BPA. The draft recommendations reflect precisely the assumptions that underlay the policies Mr. Hodel imposed on the Northwest. Let me elaborate on these two areas.

Consider that the working group has contracted for 24 studies covering the utility industry's problems and possible solutions, at a cost of approximately two million dollars. As of last week, only seven of the studies had been completed. But as early as September 9, Mr. Chiles was able to inform a conference of Chief Executive Officers of the nation's private utilities that the studies would "convincingly demonstrate" that:

> "There is already too little efficient baseload capacity, and that matters could get much worse by the end of the decade. ...Rates have generally not risen as much as most folks think, that building new plants would often lower the price of electricity... and that many of the analytical techniques used to predict very low demand growth, and little need for new capacity, have fundamental weaknesses." (Ref. 1)

According to the DOE analysis, the utiliity industry is "under-investing" in new construction, because "fundamental business decisions are being dictated, or at least tightly constrained, by government regulators and political pressures." (Ref. 2) These same "conclusions", were articulated by Howard Perry, DOE's staff director of the working group, in a paper last April. (Ref. 3)

The analysis put forward by the working group appears to us to be substantially the same as that utilized by Mr. Hodel to justify construction of the Washington Public Power Supply System (WPPSS) plants 4 and 5 in 1976. You are by now familiar with the consequences of that disastrous decision— a seven billion dollar debt for plants that will never produce power. We have yet to hear Mr. Hodel repudiate the logic of that decision, or the process that led him to it. We have yet to hear concrete steps that Mr. Hodel would have the Energy Department take to ensure that the WPPSS debacle will not be repeated for the nation as a whole.

It is critical that the committee examine the parallels between Mr. Hodel's actions at Bonneville and the administrations's current direction in energy policy as revealed by the working group.

First, consider electric demand projections. Mr. Hodel accepted high growth projections to justify an ambitious nuclear construction program in the Northwest. There were other voices which Mr. Hodel could have relied upon, which challenged those projections. Mr. Hodel instead chose to attack his critics as "anti-producers" and "anti-achievers."

Similarly, in a speech to utility regulators last month, Mr. Chiles referred to those who currently do not project growth in electric demand as "anti-technologists." (Ref. 4) In contrast, he sees "the future market for electricity ... likely to be alive-and-well."

Recently, the Congressional Research Service (CRS) reached very different conclusions from those of the working group. It foresees no reserve indadequacies in the electric regions through the 1990's, and sees several areas as "seriously overbuilt" by then. Questioning even existing incentives to new construction, such as the deferral of federal income tax on portions of dividends which are reinvested in utility stock, the report states:

> "Given that shortages are unlikely, there is a question as to the propriety of such incentives since these may be diverting funds to the utilities that might best be used elsewhere in the economy. In other words, if shortages are unlikely, why provide incentives for the construction of electrical capacity? (Ref. 7)

Mr. Hodel's critics have been making the same point for many years, but they were excluded from BPA's decision-making processes. Similarly, none of the DOE working group's 24 analytical studies were contracted to those experts who have been advocates of conservation investment as an alternative to expensive powerplant construction. Indeed, the major examination of "low-growth scenarios" was contracted to a consultant, Dr. William Heironymous, who has frequently been retained by utilities to oppose conservation alternative scenarios in regulatory proceedings.

While the working group uses the rhetoric of building "political consensus" and including public participation in supply planning, no formal mechanisms for soliciting the input of environmental and consumer groups were adopted. This despite the fact that task forces to solicit the input of various other "stakeholder groups", as Mr. Chiles refers to them, have been funded by the working group.

It is easy for Mr. Hodel to promise that he will "listen to environmental and consumer groups. Will he see that experts representing the perspectives of these groups are funded to provide adequate input into the working group's analysis and recommendations?

Using the forecasted "need" for new construction, Mr. Hodel forced northwest utility districts to assume a debt for plants that eventually proved unnecessary and uneconomical. Similarly, the working group's recommendations for regulatory reform are aimed at ensuring that financing of new plants is assured, once the "need" for new construction is determined.

Others dispute this basic analysis and prescription. For example, American Public Power Deputy Executive Director Larry Hobart has analogized Mr. Chiles' proposals to the creation of a "Strategic Powerplant Reserve-- SPR II-- financed by dollars of customers of particular utilities who don't build as much generation as the federal government wants." Mr. Hobart's response is that "throwing consumers' money at utilities is not likely to produce a positive result in the public interest," and recommended that it would be more appropriate to aim federal policy at slowing increases in electric utility bills. (Ref. 5)

Jay Kennedy, Executive Director of ELCON, a group of large industrial electric users that includes such giants as General Motors, U.S. Steel, Union Carbide and 14 others has commented:

> "At the present time, we're not terribly pleased with what we see happening at DOE. We are not convinced that the predicates on which he is building his proposals are correct... Chiles may be convinced of his facts, but it's not his money. I realize that Westinghouse and Bechtel would like to see lots of plants built, because they're in the plant-building business. We're not." (Ref. 6)

The working group is considering creating still more incentives for new construction. The recommendations now under consideration generally put more distance between decision-makers and those who pay the cost of the decisions. A proposal to move planning bodies or regulatory commissions to the regional level would weaken or eliminate the power of the states to set utility rates, as would the proposal to allow utilities to choose between regulation by their state or by the Federal Energy Regulatory

Commission.

The deregulation of new generating facilities selling wholesale power opens up the potential for regulatory chaos at the retail level. Other recommendations would amend both the Public Utility Holding Company Act and the Federal Power Act.

These reforms would radically change the relationships between ratepayers, utilities, and the state and federal governments. While the working group talks of including the public in the process of future power supply planning, we see no evidence that the public will have the resources to participate. Will the working group recommend that citizen representatives be funded to present alternatives to utility supply plans? Will energy planning in this new structure be imposed from the top down as at BPA, or will it respond to priorities set at the local level? We have heard nothing from Mr. Hodel that provides the slightest assurance on these points. Much in his record at BPA suggests the opposite.

Mr. Hodel will have the responsibility of reviewing the analysis and recommendations of the working group before they go to the cabinet council. The situation that prevailed in the Northwest, and Mr. Hodel's ability to manipulate it in favor of nuclear power, has its clear parallel in the national utility situation and the Working Group's draft policy recommendations.

It appears to us that Mr. Hodel has been nominated precisely because of his accomplishments at BPA, not in spite of them as he would have us believe. The fact that the reforms the Working Group has drafted contain many of the structural features that allowed BPA to impose an economically disastrous nuclear power strategy on the Northwest makes it difficult to accept Mr. Hodel's claim that he has "learned his lesson" and is a changed administrator.If that were true, President Reagan would have nominated someone else.

We urge you to keep the drastic changes in utility policy now looming on the horizon in mind as you consider Mr. Hodel. Imagine the head of a regional branch of a large corporation nearly driving his branch into bankruptcy with a seven billion dollar mistake, and then being promoted to run the national office! We cannot afford BPA's Northwest Energy Plan on a national scale.

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5Public Power Weekly, "DOE proposals called ineffective 'pot stirring'", November 29, 1982, p. 2.

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The CHAIRMAN. Thank you, Mr. Nogee.

Mr. Chandler, you are last but not least.

STATEMENT OF WILLIAM U. CHANDLER, WASHINGTON REPRESENTATIVE, ENVIRONMENTAL POLICY CENTER, WASHINGTON, D.C.

Mr. CHANDLER. Thank you, Mr. McClure.

I am Bill Chandler of the Environmental Policy Center. The center is a nonprofit, nonpartisan environmental lobby organization which today celebrates its 10th anniversary of working on energy issues.

We do appreciate this opportunity to testify as to Mr. Hodel. We have shared with the members of this committee the frustration of watching the Department of Energy forgo emergency preparedness, dismantle energy conservation programs, block tax incentives for energy conservation and to increase considerably the lack of balance in U.S. energy policy.

We had hoped for strong future leadership but the Environmental Policy Center finds it is necessary to make its opposition to Mr. Hodel's confirmation part of the record today.

We determined this action to be necessary after examining Mr. Hodel's record and public statements over the last 10 years.

While we will make every effort to establish a mutually respectful working relationship with Mr. Hodel if he is confirmed by the Senate, we are concerned that he lacks appreciation for the basic principles of energy policy, economics and management. These qualities are sorely needed in the Department of Energy today.

Mr. Hodel's ill-fated commitment to the Washington Public Power Supply System development is well known by now. Perhaps we could excuse this colossal mistake by observing that Mr. Hodel did not during his tenure at BPA from 1973 to 1977 have the benefit of hindsight that we now enjoy. The truth is that Mr. Hodel had available energy conservation data and information which would have enabled him to help avert the financial catastrophe that WPPSS has created.

No less a figure than Dixie Lee Ray, who was at the time Chairman of the Atomic Energy Commission and, like Mr. Hodel, a northwesterner, demonstrated the importance of energy efficiency in 1973 in a report by AEC called the Nation's Energy Future.

The National Laboratories at that time had for years been publishing reports on the cost effectiveness of energy conservation and a report commissioned by BPA during Mr. Hodel's tenure and performed by a major Northwest firm, Skidmore, Owings and Merrill, was ignored.

Published in July of 1976, this report showed how Northwest power growth could economically be cut in half.

To have ignored these authorities and to have relentlessly pushed ahead with his massive electric supply scheme suggests a lack of appreciation of energy analysis and also for the basic principles of economics and energy policy and/or a narrowness of focus unsuitable in a Secretary of Energy.

We are moved further to question Mr. Hodel's grasp of energy economics by his role in subsidizing the consumption of electric power while administrator of BPA. BPA's accounting practices initiated before but continued throughout Mr. Hodel's tenure, misrepresented the capital costs and interest charges of producing the power purchased by BPA from Army Corps of Engineers' dams.

A Price Waterhouse audit of BPA practices revealed that BPA changed their repayment methodology in terms of no longer recognizing a requirement to amortize or gradually extinguish the investment allocated to power generation.

Price Waterhouse indicated that this practice followed neither sound business principles nor the intent of the law.

BPA under Hodel also followed the practice of amortizing first those Federal investments with the highest interest rates. This practice reduced the real cost of power to BPA customers but shifted the burden to all U.S. taxpayers.

As Price Waterhouse concluded, this allocation method is not considered to be proper fiscal policy.

The difference between the higher U.S. Treasury financing cost and the lower financing cost repaid by power users is made up by general tax revenues.

The relevance of this aspect of Mr. Hodel's experience at BPA should be obvious. President Reagan has repeatedly insisted that Government be run more along the lines of sound business principles. He and many others have correctly cited Government subsidies for energy consumption as a principal cause of our energy problems.

The new Secretary of Energy will have the responsibility of encouraging efficient investment of the Nation's scarce financial resources. Yet Mr. Hodel's experience has shown serious neglect of basic economic principles to the detriment of both the BPA region and the United States as a whole.

Regarding his management skills, the disastrous experience of WPPSS is evidence that Mr. Hodel may not be a good manager. Although BPA was not directly in charge of construction of the WPPSS plants, it was underwriting three of them and thus had a deep interest in them. Prudence would have called for BPA to play a serious oversight role in the construction of these plants.

The center considers this record of management performance disturbingly inadequate, particularly in view of the magnitude of the challenge to reestablish DOE as a viable agency. DOE has been seriously hurt by personnel cuts, poor morale, and mismanagement and nonmanagement.

Of particular importance is the issue of Maxine Savitz, the Deputy Assistant Secretary for Conservation and Renewable Resources who was dismissed under Secretary Edwards. The center finds this dismissal altogether unjustifiable and an act intended to undercut the implementation of existing law through the removal of confident management.

Mr. Hodel has not expressed his intention with regard to Dr. Savitz' position. Whether he intends to continue the degradation of energy conservation programs through debilitation of DOE management is a crucial question.

Mr. Hodel, if confirmed, will have a very difficult job. The Senate will serve the country well by insisting on knowing in some detail how Mr. Hodel intends to restore balance to U.S. energy policy and how he intends to assure that this policy follows sound economic principles.

Thank you very much, Mr. McClure.

[The prepared statement of Mr. Chandler follows:]

ENVIRONMENTAL POLICY CENTER
317 Pennsylvania Ave., S.E., Washington, D.C. 20003
202/547-5330

Statement

of

William U. Chandler
Washington Representative
Environmental Policy Center

at the

Confirmation Hearing

of

Donald Hodel

Senate Energy and Natural Resources Committee

1 December 1982

EPC is a project of the Environmental Policy Institute

Introduction

I am William U. Chandler, Washington Representative, of the Environmental Policy Center. The Center is a non-profit, non-partisan environmental lobby organization, which today celebrates its tenth anniversary of working on energy issues with diverse coalitions of citizens throughout the country.

The Center appreciates this opportunity to testify before the Senate Energy and Natural Resources Committee concerning the nomination of Donald Hodel to be Secretary of Energy. We have shared with the members of this committee the frustration of watching the Department of Energy forego emergency preparedness, dismantle energy conservation programs, block tax incentives for energy conservation, and to increase considerably the lack of balance in U.S. energy policy. We had hoped for strong future leadership. But the Environmental Policy Center finds that it is necessary to make its opposition to Mr. Hodel's confirmation part of the record today. We determined this action to be necessary after examining Mr. Hodel's record and public statements over the last ten years.

The Center does not dispute the prerogative of the President to organize the Executive Branch with a team of officials of his choosing, who share his values and goals. The Senate, in confirming Presidential appointments, however, does have some responsibility to examine the extent to which the qualifications of a nominee match the responsibilities of the position.

While we will make every effort to establish a mutually respectful working relationship with Mr. Hodel if he is confirmed by the Senate, we are concerned that he lacks appreciation for basic principles of energy policy, economics, and management. These qualities are sorely needed in the Department of Energy today.

It is crucial that both the federal government and the private sector manage our financial resources wisely. Mr. Hodel's record at the Bonneville

Power Authority suggest that perhaps he does not understand basic principles of economics and energy policy. Two indications of this are: 1) his rejection of cost-effective energy efficiency investments as an alternative to thermal-electric power; and 2) his subsidization of electric energy consumption.

Mr. Hodel's ill-fated commitment to the Washington Public Power System development is well known. Perhaps we could excuse this colossal mistake by observing that Mr. Hodel did not, during his tenure at BPA from 1973 to 1977, have the benefit of hindsight that we now enjoy. But the truth is that Mr. Hodel had available to him information which would have enabled him to help avert the financial catastrophe that WPPS has created. It is a basic principle that consumers respond to higher energy prices by substituting energy-efficiency improvements, and this principle of behavior was known in the early 1970's. No less a figure than Dixie Lee Ray, Chairman of the Atomic Energy Commission and, like Hodel, a Northwesterner, expounded this principle in 1973 in "The Nation's Energy Future," a major AEC publication. The famous Ford Foundation study, A Time to Choose: America's Energy Future, which now seems tame in its appraisal of conservation, was published in 1974. The National Laboratories had for years been publishing reports on the cost-effectiveness of energy conservation. And, indeed, a report commissioned by BPA during Mr. Hodel's tenure and performed by a major northwest firm, Skidmore, Owens, and Merrill, was ignored. Published in July, 1976, this report showed how northwest power growth could economically be cut in half.[1] To have ignored these authorities and to have relentlessly pushed ahead with his massive electric-supply scheme suggests a lack of appreciation for the basic principles of economics and energy policy, and/or a narrowness of focus unsuitable in a Secretary of Energy. We find, against this background, Mr. Hodel's recent expression of interest in cost-effective conservation to be very weak.

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[1] "Bonneville Power Administration Electric Energy Conservation Study," Skidmore, Owens and Merrill, Portland, Oregon, July, 1976.

Subsidizing Electric Consumption

We are moved further to question Mr. Hodel's grasp of energy economics by his role in subsidizing the consumption of electric power while Administrator of BPA. Electric consumption per capita in the BPA region was already double the national average by the time Mr. Hodel became responsible for BPA, partly because BPA consumers did not pay the total cost of generating the power they consumed. BPA accounting practices, initiated before but continued throughout Mr. Hodel's tenure, misrepresented the capital (depreciation) costs and interest charges of producing the power purchased by BPA from Army Corps of Engineers dams. A Price Waterhouse audit of BPA practices revealed the following:

> Prior to the early 1970's the BPA set their rates so as to obtain sufficient reserves to pay off each project's operation and maintenance expenses, interest on the project investment and amortization of the project investment. Subsequently, BPA changed their repayment methodology in terms of no longer recognizing a requirement to amortize or gradually extinguish the investment allocated to power generation, but only to repay each increment...within 50 years....[2]

Price Waterhouse then indicated that this practice followed neither sound business principles nor the intent of law:

> Law requires that the Secretary of Energy dispose of power so as to encourage the most widespread use at the lowest possible rates to consumers, consistent with sound business principles (underscoring supplied). It is our preliminary position that rates set in accordance with sound business principles must provide for annual amortization of the project cost.[3]

BPA, under Hodel, also followed the practice of amortizing first those federal investments with the highest interest rates. This practice reduced the real cost of power to BPA customers, but shifted the burden to all U.S. tax payers. As Price Waterhouse concluded:

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[2] Report of Audit: Little Goose Lock and Dam Project, Lower Snake River Basin," Price Waterhouse & Co., September 5, 1980, pp. 25-26. [Emphasis added.]

[3] Ibid.

> We tentatively concur with the Corps' position [from 1978] that the DOI[4] allocation method is not considered...to be a proper fiscal policy on the basis the U.S. Treasury is not relieved of the higher financing costs of newer money as it must redeem the older and lower interest bearing bonds and notes first as they became due. The difference between the higher U.S. Treasury financing costs and the lower financing costs repaid by power users is made up by general tax revenues.[5]

Price Waterhouse's severe conclusions regarding BPA were repeated in at least four other audits of other projects.[6]

The relevance of this aspect of Mr. Hodel's experience at BPA should be obvious. President Reagan has repeatedly insisted that government be run more along the lines of sound business principles. He and many others have correctly cited government subsidies for energy consumption as a principle cause of our energy problems. The new Secretary of Energy will have the responsibility of encouraging efficient investment of the nation's scarce financial resources. Yet, Mr. Hodel's experience has shown serious neglect of basic economic principles, to the detriment of both the BPA region and the U.S. as a whole.

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[4] The Department of the Interior, to which BPA formerly belonged, technically set this policy. Direct responsibility, however, was BPA's.

[5] Price Waterhouse, pages 26 and 27. [Emphasis added.]

[6] Report(s) of Audit(s): Barneville Lock and Dam Project; John Day Lock and Dam Project; Lost Creek Lake Project; and Lower Monumental Lock and Dam Project.

Management Skills

We are aware that Mr. Hodel has conducted his management responsibilities at the Department of the Interior without major criticism. We recall, once again, however, the disastrous experience at WPPS as evidence that Mr. Hodel may not be a good manager. Although BPA was not directly in charge of construction of the WPPS plants, it was underwriting three of them, and thus had deep interest in them. Prudence would have called for BPA to play a serious oversight role in the construction of the WPPS project. The logistical nightmares that resulted in massive cost overruns at WPPS established themselves during Mr. Hodel's tenure.

The Center considers this record of management performance disturbingly inadequate, particularly in view of the magnitude of the challenge to re-establish DOE as a viable agency. DOE has been seriously hurt by personnel cuts, poor morale, and mismanagement or non-management. A new Secretary of Energy would do well to devise a management plan immediately upon taking office. And the Senate might inquire whether this plan reflected an intention to carry out the spirit--or even the letter--of the laws that define DOE's mission.

Of particular importance is the issue of Maxine Savitz, the Deputy Assistant Secretary for Conservation and Renewable Resources, who was dismissed under Secretary Edwards. The Center finds this dismissal altogether unjustifiable, an act intended to undercut the implementation of existing law through the removal of competent management. Mr. Hodel has not expressed his intention with regard to Dr. Savitz's position. Whether he intends to continue the degradation of energy conservation programs through debilitation of DOE management is a crucial question.

U.S. Energy Policy

U. S. energy policy in the 1970's was less than successful. The federal government has subsidized energy consumption and thus caused needless environmental damage, and economic opportunity costs. The government has funded costly demonstrations that promoted the most expensive and least environmentally sound technologies. The U. S. has failed to develop workable policies for emergency energy situations. It has failed to provide for the energy requirements of the truly needy. And now, in the 1980's, we have failed to assure continued progress in auto fuel economy, or to help preserve the institutional barriers holding industry from conservation, or to provide financing for homeowners to weatherize. We have, in short, failed to reduce the strategic threat caused by excessive oil imports, and to assure future energy security and services.

Mr. Hodel, if confirmed, will have a very difficult job. The Senate would serve the country well by insisting on knowing in some detail how Mr. Hodel intends to restore balance to U. S. energy policy, and how he intends to assure that this policy follows sound economic principles.

The CHAIRMAN. Thank you very much. I want to thank all of you. Although we have had some discussion about what BPA was or was not, this is not a very exhaustive review of the problems that the Northwest faces and will continue to face.

There is no one more concerned than I about how that happened and where we go from here as we try to find a way to salvage as much as possible out of a very severe economic problem that afflicts the Bonneville Power Administration and the Northwest as a result of some of the past actions and the evolution of that burden as it has shifted to the ratepayers in the Northwest. It is a serious problem.

I cannot help but note, Mr. Chandler, that every one of us who has been around any time at all will have statements read to us later on that we might regret or might like to put in a different context. I say that not because I think you quoted Dixie Lee Ray out of context, but I would like to change the context a little by pointing out that she also testified before this committee that we would have, by the end of this century, between 380 and 400 licensed and operating nuclear power reactors.

I asked her at that time if in view of their construction schedule and beginning of operation, if she really believed that was going to happen, pointing out to her that would mean that a new 1,000-megawatt plant would have to go into operation every 2 weeks from 1990 to the end of the century.

I point that out only because there are different contexts in which the statements are made. Sometimes they appear differently later.

I want to thank you all very much for your testimony today. I regard each of you as being very serious in what you have said. You have a serious point of view.

The committee will exercise its own judgment, of course, and it may or may not agree with the judgments you gentlemen have made. That does not mean the committee has not listened, and it does not mean it will not consider very seriously what you have said.

Mr. **Pomerance**. Mr. Chairman, would it be possible for me to submit the summary of this report on what has happened at the Office of Surface Mining for the record?

The **Chairman**. Yes, the summary only.

Mr. **Pomerance**. Right.

The **Chairman**. That will be made a part of the record.

[The material submitted by Mr. Pomerance follows:]

FOR NOON RELEASE
Thursday, September 9, 1982

ABUSE OF TRUST. . .
Secretary of the Interior James G. Watt's Proposals to Weaken the Regulation of Strip Mining

a Report by the Surface Mining Project of the
National Wildlife Federation

Summary and Conclusions

Shortly after taking office, Secretary of the Interior James G. Watt began rewriting the federal regulations that govern the strip mining of coal, with the avowed purpose of eliminating excessive regulations and cutting costs for coal operators. After laboring for 18 months and spending uncounted thousands of taxpayers' dollars, the Office of Surface Mining has produced hundreds of pages of proposed new strip mining rules.

The National Wildlife Federation has spent the last two months examining these proposed new rules and presents this report to the public on its findings.

We conclude that, if implemented, Secretary Watt's proposed new regulations would cut the heart out of the Surface Mining Program. Under the Watt proposals:

1. Citizens would lose existing rights to assure that mining does not occur in especially sensitive areas;

2. Critically important minimum national environmental standards would be weakened or eliminated altogether;

3. Mining would be permitted under certain proposals in National Forests, Wildlife Refuges, National Parks, privately owned property listed on the National Register of Historic Places and other nationally significant areas where it should be banned.

At the same time, contrary to Secretary Watt's promises, the proposed new rules would neither significantly cut costs nor reduce regulatory burdens on mine operators or the states.

It is ironic that an administration that espouses cost/benefit analysis would propose regulations that will impose enormous costs on the public with very few benefits even for mining companies.

We believe there are two major reasons for this misjudgment. First, the Office of Surface Mining has gone about its regulatory rewrite with very little advance study and in violation of many important legally mandated procedural safeguards. Second, the entire regulatory review has been based on a series of false premises. In the pages that follow, we briefly outline these major points.

THE PROPOSED CHANGES WOULD CUT THE HEART OUT OF THE PROGRAM

Secretary Watt and his Office of Surface Mining have proposed over 400 changes to the existing strip mining regulations. The NWF study examines several categories of those changes in detail and concludes that:

1. Important Citizens Rights Would Be Repealed

Section 522(c) of the Surface Mining Act unambiguously grants to citizens the right to petition to have certain privately owned lands declared unsuitable for surface mining because they can not be technologically or economically reclaimed after mining. OSM has proposed to limit that right to persons with a "significant and tangible" property interest. This would take away the petition rights from those citizens who hunt, fish, backpack, birdwatch or otherwise enjoy but who don't own property in a particular area.

Even more serious in its impact on citizens could be OSM's proposal to eliminate entirely the process by which citizens can petition to have federal lands declared unsuitable for surface mining.

2. Environmental Standards Would be Weakened or Eliminated

In enacting the Surface Mining Act, Congress instructed OSM to promulgate minimum national environmental standards to control the strip mining of coal. OSM did so in 1979 after extensive debate, analysis, and compromise. The Department of the Interior has now proposed to weaken or eliminate entirely many of the key existing minimum national standards. NWF has examined in detail nine categories of OSM's proposed new regulations and reached the following conclusions:

> Roads. The prior OSM road rules were aimed at reducing the sedimentation of streams, reducing fugitive dust, controlling erosion, protecting fish and wildlife habitat, increasing public safety, and decreasing the chances for landslides by requiring the stabilization of cuts and fills and the construction of adequate drainage structures. EIS at p. AIII-9.
>
> OSM's proposed option II would delete the existing design criteria in favor of more general performance standards. If implemented, this option would allow stream pollution, destruction of aquatic habitat, downstream flooding, slope failure, and endanger mine employees. In contrast, proposed option I represents a sound approach to the regulation of roads with one major exception--the option fails to regulate adequately the impacts of non-haul access roads which can be a major source of pollution.
>
> Alluvial Valley Floors. Special lowland areas of the West known as alluvial valley floors are important as a source of water for agriculture and are especially sensitive to mining. Because of their unique value and environmental sensitivity, Congress granted them special protection in the Surface Mining Act. The proposed new rules would--through a series of changes in critical definitions--significantly curtail the protection of AVF's. They would permit the identification of AVF's to be made on the basis of limited information. They would also delete valuable information requirements and explanations contained in the existing rules. Finally, the proposed rules represent OSM's decision to abandon its challenge to a federal Court decision that would allow material damage

to the quantity and quality of certain waters that supply AVF's.

Hydrology and Geology. The Surface Mining Act, Section 515(b)(10) requires OSM to act to minimize the disturbance to the prevailing hydrologic balance at and near mine sites. The proposed rules delete existing critical data requirements for permit applications, require less detailed chemical data and flow characteristics, and weaken monitoring requirements. These will make permit review more difficult and increase the likelihood that the hydrologic balance will be adversely affected.

Finally, in a clear example of putting the cart before the horse, OSM will require mine operators to determine probable hydrologic consequences before deciding whether or not to collect certain data.

Prime Farmlands. The nation is losing over a million acres of its best farmland each year. To help stem this problem, Congress commanded in Section 510(d)(1) of the Surface Mining Act that mining on prime farmlands can occur only if those lands can be restored to their original productivity or greater after mining. By giving states greater flexibility to grant variances from this prime farmland soil reconstruction standard, OSM's proposed new rules will increase the likelihood that inadequate soil reconstruction practices will be used and thereby jeopardize successful restoration of prime farmland productivity.

OSM's proposed new rules would weaken the process for identifying prime farmland by eliminating reconnaissance inspections.

In addition, OSM's proposals exempt permanent facilities and last cut impoundments from the prime farmland reconstruction standards. As a result, as much as one-third of each mine site may be left unrestored to productive farmland.

Revegetation. Section 515(b)(19) of the Surface Mining Act requires the revegetation of mined lands after mining. The proposed new regulations delete specific requirements for field trials of introduced species, mulching standards, grazing to demonstrate restoration of productivity of rangelands, proper maintenance and management practices, and monitorings. As such, they substantially weaken the existing rules with respect to practices needed to ensure the success of revegetation.

Moreover, the new rules shorten the period of responsibility for success of revegetation in both the East and the West, thereby increasing the chances that revegetation failure, if it occurs, will take place after bond release.

Finally, the proposed revegetation regulations go so far as to permit the use of noxious and poisonous plants in revegetation.

Fish and Wildlife Protection. The Surface Mining Act requires mine operators, to the extent possible, to use the best technology currently available to minimize harm to fish and wildlife. The new rules would not assure that this happens. As OSM's own EIS recognizes, the proposed new rules would result in significant harm to fish and wildlife. The new regulations will drop existing protections for many small streams in Appalachia and would permit mining within 100 feet of all streams under certain circumstances. Reporting requirements concerning threatened and endangered species would be deleted or weakened. And a number of important design criteria aimed at protecting fish and wildlife would be repealed including standards concerning powerline design, haul road location and use, fencing of toxic waste ponds, fencing of roadways, and use of persistent pesticides. Finally, the proposed rule deletes the existing requirement that wetlands be preserved or created.

Topsoil. Section 515(b)(2) of the Act requires the restoration of land capability after mining. The new regulations will not be adequate to assure this restoration. Among other things, they require less specific tests for topsoil substitutes, exempt steep last cut slopes from topsoil requirements, and permit inadequately justified proposals for dispersed long term storage of topsoil at underground mine sites.

Prime Farmland Grandfather Clause. We commend OSM for its proposal to cut-off the grandfathering of prime farmland. Under the new OSM rule, all prime farmland mined after April 3, 1983, will be required to meet the special prime farmland restoration requirements of the Act. This is an important step that will protect hundreds of thousands of acres of the nation's best farmland.

Sedimentation Ponds. Sediment from mining operations can destroy sensitive streams. OSM's proposed new rules would dramatically weaken existing controls on fine suspended solids, and heavy metals. Important design criteria are replaced by vague performance standards. This will increase the likelihood that sediment ponds will be improperly designed and maintained.

3. Sensitive Areas Would Be Opened to Strip Mining

Finally, OSM has proposed various changes that will open up to strip mining sensitive areas where such mining should be banned. For example:

- According to the National Park Service, OSM's proposed Option 3 for defining "valid existing rights" would permit mining on 1.7 million acres within 26 units of the Park Service. Countless additional acres adjacent to the National Parks would also be opened to mining.
- According to OSM's own draft EIS, roughly 1.3 million acres of National Forests and Wildlife Refuges would be opened to strip mining under the Option 3 definition.
- OSM's proposals would permit mining on privately owned property listed on the National Register of Historic Sites.

- OSM has proposed to redefine cemetery in such a manner as to permit mining in family burial plots.
- OSM has proposed to permit mining within privately owned public parks.

THE PROPOSED RULES OFFER FEW REDEEMING BENEFITS

OSM has attempted to sell its proposed new rule package on the grounds that it will cut costs to mine operators and reduce regulatory burdens. Detailed studies of the proposed changes indicate that the new rules will do neither.

First, as to cost reductions, OSM has not undertaken any detailed analysis of the cost impacts of its proposed new rules. The only study that has been done indicates that the cost impacts will be insignificant. A study commissioned by the U.S. Department of Energy concludes that, for the most part, the potential cost savings will be less than 5 cents per ton of coal.

Second, the proposed regulations should increase rather than decrease regulatory burdens on both state governments and mine operators. In order to cope with the proposed more general standards, the state regulatory authorities will be required to perform detailed engineering analyses of individual proposed designs, conduct extensive negotiations with mine operators, closely monitor individual mining operations to determine whether the performance standards are met, and hire additional engineering and inspection personnel. Similarly, mine operators will be required to conduct extensive negotiations and undertake detailed design and engineering studies.

THE PROPOSED CHANGES ARE BASED ON FALSE PREMISES AND INADEQUATE STUDY AND ANALYSIS

We believe that there are two reasons why this administration, which prides itself on cost/benefit analysis, would propose a package of regulatory changes that will neither adequately protect the environment nor cut regulatory costs or burdens:

(1) OSM has based its rewrite of the regulations on a series of seven false premises.

(2) OSM failed to study and analyse adequately the proposed changes, and employed illegal procedures in drafting the new rules.

The Changes Are Based on False Premises

Our analysis of OSM's rules changes discloses seven premises that underly almost all of the proposals. We believe these premises are false and will only lead to an ineffectual regulatory program:

Premise 1: The States Can Responsibly Set Minimum Environmental Standards. Congress dismissed this premise when it enacted the federal Surface Mining Act. Congress rightfully recognized that the states face intense pressures to compete for coal business and therefore only OSM can realistically be expected to set effective and adequate minimum standards.

Premise 2: Performance Standards are More Effective than Design Criteria. OSM has proposed to delete at least 17 of the existing 36 design criteria. In so doing, OSM has failed to consider the serious disadvantages posed by the more general performance standard approach. Among other things, it is very difficult to determine whether a performance standard has been complied with; the evaluation of proposed designs against general performance standards can be very costly; and performance standards increase environmental risk since failure to perform can only be determined after the harm has been done.

Premise 3: Engineers can Guarantee Compliance with the Act. In a number of regulatory areas, OSM proposes to rely on engineers to certify designs as complying with the Act. However, there is no evidence that these engineers can be held legally accountable for their actions. Moreover, there will be an incredible temptation for mine operators to shop for more lenient engineers.

Premise 4: OSM's Oversight Program is Adequate. OSM repeatedly assumes that its oversight program will be able to control effectively the increased flexibility being accorded the states and mine operators. Nowhere has OSM undertaken studies to substantiate this claim..

Premise 5: States Will Vigorously Enforce the Act. OSM fails completely to analyze the impact of budget cuts on the ability of state regulatory authorities to enforce the Act vigorously given their increased flexibilities and responsibilities. A number of recent studies cast severe doubt on the ability of the states to implement fully effective programs at the present time.

Premise 6: Increased Flexibility is Necessary and Desirable. OSM assumes states and mine operators need increased flexibility. However, the proposed rules already provide considerable flexibility. OSM has provided not a single concrete example of where the existing rules deprive states of the flexibility to adopt regulations that reflect circumstances peculiar to individual states.

Premise 7: Deletion of Existing Language "Simplifies Regulation." OSM apparently believes that the deletion of specific criteria in the existing regulations simplifies regulation. In fact, it does the opposite by leaving open a wider range of possible alternative actions.

The Changes Reflect Inadequate Study and Illegal Procedures

Finally, the new regulations are the product of a regulatory reform effort that has been short on analysis and long on procedural violations. Among other things, the regulatory reform has been tainted by:

1. OSM's decision to splinter the rewrite of the regulations into 46 separate but legally and factually related rulemakings. This is plainly in violation of the spirit, if not the letter, of Section 501(b) of the Act. This splintering has made effective public comment on the regulations all but impossible. Cross references are often impossible to find. Various rulemaking notices contain conflicting statements. And, the assessment of cumulative impacts is impossible.

2. OSM closed various related rulemakings at different points in time. This has made it impossible for the public to comment on the interactions between related rulemakings. For example, the comment period on the Federal lands regulations is now closed while the lands unsuitable comment period is open. However, these two rulemakings have a significant cumulative interaction. The Federal lands regulations propose to confer authority for decisions on certain federal lands to state regulatory authorities while the new definition of valid existing rights proposed in the lands unsuitable regulations would open up over a million acres of such federal lands to strip mining. Nowhere is the public invited to comment on such an interaction and nowhere does OSM examine it.

3. OSM first refused to prepare an environmental impact statement on its regulatory reform effort and has now produced one that is grossly inadequate. The existing draft EIS that has now been published by OSM fails to analyze over 219 of OSM's proposed rule changes. The DEIS is almost totally devoid of supporting technical data and contains numerous flaws in its impact

analysis. The DEIS lacks any systematic criteria for evaluating the significance of proposed impacts. The DEIS is based on overly optimistic assumptions rather than the worst case analyses required by law. And, finally, the DEIS contains neither an assessment of cumulative nor regional environmental impacts.

4. OSM's preambles to the new rules contain numerous statements of fact and belief that are directly contradicted by assertions in the existing preamble. Nowhere does OSM even attempt to explain these contradictions nor does the agency offer evidence of why the preambles to the existing rules are incorrect.

5. Neither the preambles to the proposed rules nor the DEIS contain any discussion of the experience of OSM with respect to the existing program. Needless to say, it is irrational to change an existing program without examining that program in detail. Admittedly, OSM's failure to examine the existing program is related to its failure to comply with its existing obligation to review the administration of state programs "at least annually." 30 CFR 633.12(a)(1).

6. OSM has failed to examine the relationship between its regulatory reform efforts and other related actions of the Department including budget cuts, the OSM oversight policy, employee transfers and RIFs, and the approval of state programs.

CONCLUSION

If implemented, OSM's proposed rule changes would turn back the clock to the pre-federal law era when private greed rather than the public interest determined how coal mining was conducted.

What emerges from all of the technical detail presented in our report is a portrait of a Secretary of the Interior willing to put the desires of the nation's coal companies above that of the nation as a whole; a federal official willing to abuse the trust which the people have placed in him.

Mr. SKLAR. Mr. Chairman, on the back of my testimony are those questions that the lobby and the Sierra Club posed together. Is it possible to request the committee to ask those since you have a 5:00 p.m. deadline?

The CHAIRMAN. I will take a look at those questions, and I have not done so. If they are of a pertinent nature, we will submit them to him. If they are rather of a general nature we perhaps will not.

Mr. SKLAR. They are specific. Thank you very much.

The CHAIRMAN. Thank you very much.

Mr. CHANDLER. We would request permission to submit an additional short statement for the record.

The CHAIRMAN. Yes, it will be received. When will you have that ready?

Mr. CHANDLER. Tomorrow, would that be acceptable?

The CHAIRMAN. That will be fine. We will place that in the record when it is received.[1]

The CHAIRMAN. Thank you very much. The hearing is adjourned.

[Whereupon, at 4:15 p.m., the hearing was adjourned.]

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[1] The additional statement by the Environmental Policy Center was not submitted.

APPENDIXES

APPENDIX I

Informational Statements of the Nominees

U.S. Department of Energy
Assistant Secretary for
Congressional, Intergovernmental
and Public Affairs
Office of Public Affairs
Washington, D.C. 20585
202/252-5644

BIOGRAPHY

DONALD PAUL HODEL

Donald Paul Hodel was sworn in as the fourth Secretary of the Department of Energy on November 5 pursuant to a recess appointment granted by President Reagan. The President submitted the nomination of Mr. Hodel as Secretary of Energy to the Senate on November 15, 1982.

Previously, Mr. Hodel had been serving as President Reagan's Under Secretary of the Interior since his confirmation by the Senate on February 5, 1981.

Mr. Hodel was born in Portland, Oregon in 1935. He received his Bachelor of Arts degree in Government from Harvard University in 1957 and his Doctor of Jurisprudence from the University of Oregon School of Law in 1960. He was student editor of the University of Oregon Law Review. A member of the Oregon State, Multnomah County, and Federal Bar Associations, Mr. Hodel was active in both corporate and private law practice in Portland for nine years.

He was appointed Deputy Administrator of the Bonneville Power Administration, which was then a part of the Interior Department, on October 1, 1969. He was appointed Administrator of the Bonneville Power Administration on December 1, 1972, and served on the Board of Trustees of the National Electric Reliability Council, the Board of Directors of the Electric Power Research Institute, the Executive Committee of the Western Systems Coordinating Council, the Advisory Committee on Energy Facility Siting of the National Science Foundation, and the Board of Directors of the U.S. National Committee of the World Energy Conference.

An early leader in energy conservation programs in the Pacific Northwest, Mr. Hodel was the recipient, in March 1974, of the Interior Department's Outstanding Service Award (Gold Medal) for energy conservation activities. This award, conferred by Rogers C. B. Morton, then Secretary of the Interior, was the first such award conferred by any Federal agency for energy conservation.

Subsequently, he received the Distinguished Service Award from the Northwest Public Power Association in June 1975 and a Department of Commerce Save Energy Citation in October 1975.

(more)

In 1978, Mr. Hodel and his wife, Barbara, formed an energy consulting firm, Hodel Associates, Incorporated. He served for two years as President of the National Electric Reliability Council, a national organization of public, private and Federal electric systems dedicated to augmenting the reliability and adequacy of bulk power supply.

Mr. Hodel was a delegate in 1971 to the Eighth World Energy Conference (WEC) in Bucharest, Romania; the 1974 Ninth WEC in Detroit, Michigan; the 1977 Tenth WEC in Istanbul, Turkey; and the 1980 Eleventh WEC in Munich, Germany.

He was appointed to the Oregon Alternate Energy Development Commission by Governor Victor Atiyeh in 1979 and was elected to the Board of Directors of the U.S. National Committee of the World Energy Conference in February 1980.

November 1982

UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name:	HODEL (LAST)	DONALD (FIRST)	PAUL (OTHER)

Position to which nominated: SECRETARY OF ENERGY **Date of nomination:** November 15, 1982

Date of birth: 23 (DAY) May (MONTH) 1935 (YEAR) **Place of birth:** Portland, Oregon

Marital status: Married **Full name of spouse:** Barbara Beecher (Stockman) Hodel

Name and ages of children: David B. Hodel (21)
Philip S. Hodel (Deceased)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
U.S. Grant High School Portland, Oregon	9/49 - 6/53		
Harvard University	9/53 - 9/57	A.B.	June 1957
University of Oregon School of Law	9/57 - 6/60	J.D.	June 1960

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates.

Secretary of Energy, Washington, D.C. (11/5/82 to date).

Under Secretary of the Department of the Interior, Washington, D.C., (2/9/81-11/5/82).

Hodel Associates, Inc., 2825 Dellwood Dr., Lake Oswego, Oregon, which was engaged in the energy consulting business. President and a Director (1/1/78-2/5/81). [I was the employee with overall responsibility for rendering consulting services to the corporation's clients. A list of the clients of Hodel Associates, Inc., for the period 1/1/79-2/5/81, is set forth on pages 2 through 10 of Schedule "D" of SF-278 which is incorporated as part of this statement. I resigned as President and a Director of Hodel Associates, Inc. on February 5, 1981, on which date the corporation began the winding-up and liquidation described in SF-278.]

DONALD PAUL HODEL

Employment Record (continued)

Cascade Water Power Development Corporation, 1105 Commonwealth Bldg., Portland, Oregon, engaged in small hydro development in Oregon. President (1/12/81-1/27/81, at which time resignation was tendered by me and accepted).

National Electric Reliability Council, Research Park, Terhune Road, Princeton, N.J., a non-profit organization concerned with reliability of electric power systems. Secretary-Treasurer and Director (1972-77); President and Director (1978-80).

Bonneville Power Administration, 1002 N.E. Holladay St., Portland, Oregon, a Federal power marketing agency. Deputy Administrator (10/1/69-11/30/72); Administrator (12/1/72-12/31/77).

Georgia-Pacific Corporation, 900 S.W. Fifth Ave., Portland, Oregon. Attorney-Legal Department (11/11/63-9/30/69).

Rockwood, Davies, Biggs, Strayer & Stoel (now known as Stoel, Rives, Boley, Fraser & Wyse), 900 S.W. Fifth Avenue, Portland, Oregon. Associate attorney (8/60-11/63).

Huntington Rubber Mills, 7100 S.W. Macadam Ave., Portland, Oregon. Miscellaneous summer work (summers of 1957-63).

Employment record—Continued

Military service: Enter all military service if not included above: service, dates, rank, type of discharge.

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Department of the Interior Outstanding Service Award (gold medal) - conferred by Secretary Morton for energy conservation activities (March 1974).

Distinguished Service Award of Northwest Public Power Association (June 1975).

Honorary Membership - Northwest Public Power Association (June 1978).

Paul Patterson Memorial Fellowship (first recipient), University of Oregon Law School (1959).

National Scholarship - Harvard College (1953).

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (If any)	Dates
Governor's Alternate Energy Development Commission - State of Oregon	Member	1979-80
Electric Power Research Institute, Palo Alto, CA	Director	1973-77
Western System Coordinating Council	Director, Exec. Comm.	1969-77
U.S. National Committee, World Energy Conference	Director	1972-77 1979-81
Easter Seal Society of Oregon	Director	1967-70

DONALD PAUL HODEL

Memberships (continued)

Organization	Office	Dates
Lutheran Family Service, Portland, Oregon	Fund Drive Chairman	1978-81
Our Savior's Lutheran Church, Lake Oswego, Oregon	Member	1975-Present
United Way (Tri-County Chapter), Portland, Oregon	Director, Exec. Comm.	1970-1974
Delaunay Institute for Mental Health; Portland, Oregon	Director	1967-71
Institute of Public Affairs Research, Inc., Portland, Oregon	Vice President; Director	Approx. 1972-77
Donro Enterprises (an Oregon Christmas tree farm)	Secretary; Director	Approx. 1962-65
Tridell Corporation (manufacturer of charcoal patio space heating units), Portland, Oregon	Secretary; Director	Approx. 1960-61
Oregon State Bar	Member	1960-Present
American Bar Association	Member	1964-79
Multnomah Bar Association	Member	1967-81
Federal Bar Association (Oregon)	Member	1970-78
Portland Federal Executive Board, Portland, Oregon	Member	1972-77
City Club of Portland	Member	1970-Present
Arlington Club, Portland, Oregon	Member	1978-82
Multnomah Athletic Club, Portland, Oregon	Member	1950-Present
Harvard Club of Oregon, Portland, Oregon	Vice President	Mid-1960's

DONALD PAUL HODEL

Memberships (continued)

Organization	Office	Dates
Junior Achievement Fund Drive, Portland, Oregon	Member	1971-72
Oregon Law Review, University of Oregon Law School	Student Editor	1959-60
Pierian Sodality of 1808 (Harvard-Radcliffe Orchestra), Cambridge, Massachusetts	Member	1953-55
Portland Junior Symphony, Portland, Oregon	Member	Approx. 1949-51
U.S. Grant High School, Portland, Oregon	Student Body President	1953
Republican State Central Committee of Oregon	Chairman	1966-67
Clackamas County (Oregon) Republican Central Committee	Precinct Organizer Secretary Chairman	1963-64 1964-65 1965-66
Reagan for President Committee, Portland, Oregon	Tri-County Chairman Steering Committee	1968 1980
Republican National Convention	Alternate Delegate (Oregon)	1968

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written.

"The Doctrine of Exemplary Damages in Oregon," 44 Oregon Law Review 175 (1965).

Student Case Note, 39 Oregon Law Review 199 (1960) [concerning extradition under Uniform Reciprocal Enforcement of Support Act]

Student Case Note, 38 Oregon Law Review 276 (1959) [concerning waiver of defenses by execution of renewal promissory notes]

Student Case Note 38 Oregon Law Review 188 (1959) [concerning liability of seller's assignee for seller's breach of warranty]

"The Prophets of Shortage," a speech delivered to the City Club of Portland, Portland, Oregon (July 11, 1975), published in Utilities Fortnightly.

Various reports and documents prepared or supervised in official capacity as Under Secretary of the Department of the Interior (2/9/81-11/5/82) and as Administrator, Bonneville Power Administration (12/1/72-12/31/77); including annual reports, environmental impact statements, budgets, and similar materials.

Qualifications: State fully your qualifications to serve in the position to which you have been named.

(attach sheet) See attached Exhibit 1.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

If confirmed, I shall continue to serve as Secretary of Energy. Connections with all prior employers have been severed. Interest in Hodel Associates, Inc. Profit Sharing Trust will continue, as indicated in attached SF-278.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No plans concerning future employment.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Not applicable.

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

All investments presently owned by me and/or by my wife are listed in attached SF-278. None of such investments nor any obligations are believed to involve potential conflicts of interest. In view of my commitments set forth in attached Exhibit 3, no relationships are believed to involve potential conflicts of interest.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

See attached Exhibit 3

4. List and describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or for the purpose of affecting the administration and execution of national law or public policy.

As Under Secretary of the Department of the Interior (DOI) and as Administrator of Bonneville Power Administration (BPA), I have had occasion to testify before Committees of the Congress and to meet with their staffs concerning annual DOI and BPA appropriations and other legislation affecting DOI or BPA. As President of the National Electric Reliability Council, I testified on July 16, 1979 before the Subcommittee on Energy and Environment of the House Committee on Interior and Insular Affairs and on September 20, 1979 before the Subcommittee on Energy Research and Production of the House Committee on Science and Technology concerning national and regional power needs. There have not been other activities of the kinds described in this question.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

See attached Exhibit 3

6. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them.

See attached Exhibit 3

Financial statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

Attached hereto as Exhibit 2.

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

Hodel Associates, Inc. Profit Sharing Trust.

See attached SF-278.

3. Are any assets pledged? (Add schedule.)

Personal residence is mortgaged to Pacific First Federal Savings & Loan Association, Portland, Oregon. Vacant lot held for investment is subject to a land sale contract, as disclosed in attached SF-278.

4. Are you currently a party to any legal action?

Yes. See attached Exhibit 4.

5. Have you ever declared bankruptcy?

No.

6. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain.

Yes.

7. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No.

AFFIDAVIT

Washington, D.C.) ss

DONALD PAUL HODEL , being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Donald Paul Hodel

Subscribe and sworn before me this 24 day of November , 1982

Cheryl D. Arrington
Notary Public

My Commission Expires November 14, 1984

DONALD PAUL HODEL

EXHIBIT 1

QUALIFICATIONS

Personal Data

2352 S. Queen Street
Arlington, Virginia

Married (25 years)

Born: May 23, 1935

Education

A.B. degree in Government, Harvard University (1957)
J.D. degree, University of Oregon Law School (1960)

Particularly Valuable Experiences

Under Secretary of the Department of the Interior (2/9/82-11/5/82)

Bonneville Power Administration - Deputy Administrator (10/1/69-11/30/72); Administrator (12/1/72-12/31/77). [BPA is a Federal power marketing agency whose activities have major impact upon the Pacific Northwest. Responsibilities included managing 3,500 employees and participating actively in policy development.]

Hodel Associates, Inc. - President (1/1/78-2/5/81). [Hodel Associates, Inc. was an energy consulting firm whose business activities afforded me an opportunity to become better acquainted with a wide range of issues confronting government, the energy industry, and consumers.]

Practicing Attorney, first with a large law firm in Portland, Oregon (8/60-11/63), and then in the legal department of Georgia-Pacific Corporation (11/11/63-9/30/69).

National Electric Reliability Council - Secretary-Treasurer (1972-77); President and Director (1978-80). [N.E.R.C. is a non-profit organization composed of a broad spectrum of publicly and privately owned utilities, as well as Federal power marketing agencies, which primarily is concerned with reliability of electric power systems.]

Governor's Alternate Energy Development Commission of the State of Oregon - Member (1979-80). [The Commission was established primarily to assess the potential alternate energy development in the State of Oregon and the ways in which the State could encourage such development.]

DONALD PAUL HODEL

EXHIBIT 1 (continued) 2

Electric Power Research Institute - Director (1973-77). [E.P.R.I. is a non-profit organization composed of numerous publicly and privately owned utilities, as well as Federal power marketing agencies and the Tennessee Valley Authority. As a director, I had the opportunity to participate in the development of policy regarding, and in the overall management of, the various research projects in which E.P.R.I. was engaged.]

U.S. National Committee, World Energy Conference - Director (1972-77, 1979-81). [As a Director, and as a United States delegate at the World Energy Conferences in 1971, 1974, 1977, and 1980, I have had the opportunity to become more fully informed of the energy opportunities, problems, and points of view of other nations.]

Particularly Significant Honors

Department of the Interior Outstanding Service Award (gold medal) conferred by Secretary Morton for energy conservation activities (March 1974).

Distinguished Service Award of Northwest Public Power Association (June 1975).

Honorary Membership - Northwest Public Power Association (June 1978).

United States of America
Office of
Government Ethics

Office of Personnel Management
Washington, D.C. 20415

22

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Donald P. Hodel, who has been nominated by President Reagan for the position of Secretary of the Department of Energy.

We have reviewed the report and have also obtained advice from the Department of Energy concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. I enclose a copy of the Department's letter to this Office, dated November 12, 1982, setting forth its guidance to Mr. Hodel in his new position.

Based on the foregoing, we believe that Mr. Hodel is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David R. Scott
Acting Director

Enclosures

SF 278 (Rev. 6/81)
FPM Chapter 734
U.S. Office of Personnel Management

FINANCIAL DISCLOSURE REPORT

Form Approved
OMB No. 3209-0001

Exhibit 2

Reporting Status *(Check Appropriate Box)* ☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Report	**NOTE** All schedules must be filed. Enter "None" in areas or across schedules where appropriate.	**Agency Use Only** Date of Filing *(Month, Day, Year)*	**OGE Use Only**

Reporting Individual's Name	Last Name HODEL	First Name and Middle Initial DONALD PAUL		
Position for Which Filing	Title of Position Secretary	Department or Agency *(If Applicable)* Department of Energy	Date of Appointment, Candidacy, Election or Nomination *(Mo., Day, Yr.)* November , 1982	Termination Date *(If Applicable)* *(Month, Day, Year)* Not applicable
Location of Present Office	Address *(Number, Street, City, State and Zip Code)* Department of the Interior Building 18th and C Streets, N.W., Washington, D. C. 20240		Room Number 6110	Telephone No. *(Include Area Code)* (202) 343-5183
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination Senate Energy and Natural Resources Committee		Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held Under Secretary, Department of the Interior February 9, 1981 to date			
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual /s/ Donald Paul Hodel			Date *(Month, Day, Year)* NOV. 5, 1982
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official			Date *(Month, Day, Year)*
Office of Government Ethics Use Only ➤	Signature			Date *(Month, Day, Year)*

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if comments are continued on the reverse side) ☐

SF 278—Financial Disclosure Report
(Rev. 6/81)

INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?............	X	
SEE SCHEDULE "A" - PAGES 3 and 4		
If "yes", have you reported the income from the trust?............		
If "yes", have you reported the assets of the trust?............		
If "yes", is this trust an "excepted" trust?... Yes ☐ No ☐ or "qualified" trust?....		

	Yes	No
Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported?		X
If "Yes," do you certify to all of the following? 1. They represent solely your spouse's or dependent child's financial interest or responsibility; 2. They are not, in any way, past or present, derived from your income, assets, or activities; 3. You neither derive, nor expect to derive, any financial or economic benefit from them; and 4. You do not have knowledge as to the composition of such interest or liabilities.		

Page Number ► 1

Schedule A

Reporting Individual's Name
HODEL, DONALD PAUL

Agency Use Only
Date of Filing (Month, Day, Year)

Spouse (S) or Dependent Child (DC)	Identification	Income 1/1/81 through 10/27/82																		Interests in Property							
		Type of Income (✓)							Category of Amount or Value (✓)											Valuation of Assets (✓)							
		Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	HODEL ASSOCIATES, INC. Lake Oswego, Oregon - 50% stock prior to Feb. 17, 1982 [Note: Mr. Hodel engaged in no activities in behalf of, and rendered no services to, Hodel Associates, Inc. after January 14, 1981. He received no compensation for services to the corporation during 1981. On Feb. 5, 1981, the date of his confirmation by the United States Senate as Under Secretary of the Department of the Interior, Mr. Hodel resigned as President and a Director of the corporation. On that date, all business activities of Hodel Associates, Inc. ceased. The corporation proceeded to wind-up its affairs and to liquidate pursuant to a Plan of Complete Liquidation adopted by the Board of Directors and shareholders on Feb. 5 1981. Such liquidation was completed by July 31, 1981, which accounts for no value being attributed herein for Mr Hodel's former stock interest in the corporation. During 1981, Mr. Hodel received from the corporation distributions in liquidation attributable to his 50% stock interest in the corporation.							Distributions in liquidation					x				6,115		None						

SF278—Financial Disclosure Report
(Rev. 6 81)

INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?	☐	☐
If "yes", have you reported the income from the trust?	☐	☐
If "yes", have you reported the assets of the trust?	☐	☐
If "yes", is this trust an "excepted" trust? Yes ☐ No ☐ or "qualified" trust?	☐	☐

	Yes	No
Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported?	☐	☐
If "Yes," do you certify to all of the following? 1. They represent solely your spouse's or dependent child's financial interest or responsibility; 2. They are not, in any way, past or present, derived from your income, assets, or activities; 3. You neither derive, nor expect to derive, any financial or economic benefit from them; and 4. You do not have knowledge as to the composition of such interest or liabilities.	☐	☐

Page Number ➤ 2

Schedule A

Reporting Individual's Name

HODEL, DONALD PAUL

Agency Use Only

Date of Filing (Month, Day, Year)

Spouse (S) or Dependent Child (DC)	Identification	Income 1/1/81 through 10/27/82																		Interests in Property						
		Type of Income (✓)							Category of Amount or Value (✓)											Valuation of Assets (✓)						
		Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria		Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	The amount of distributions shown herein is their gross value without consideration of the tax basis of the underlying stock. Hodel Associates, Inc. formally was dissolved on February 17, 1982.].																									
	HODEL ASSOCIATES, INC.																									
s	Lake Oswego, Oregon - 50% stock prior to Feb. 17, 1982. [Note: Mrs. Hodel received no compensation for her services to Hodel Associates, Inc. during 1981. She received from the corporation distributions in liquidation attributable to her 50% stock interest in the corporation. The amount of distributions shown herein is their gross value without consideration of the tax basis of the underlying stock. Since, as noted under the information concerning Mr. Hodel, the liquidation of Hodel Associates, Inc. was completed by July 31, 1981, no value has been attributed herein for Mrs. Hodel's former stock interest in the corporation.].							Distributions in liquidation.					x				6,115			None						

SF 278 - Financial Disclosure Report
(Rev. 6 81)

INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?	X	
HODEL ASSOCIATES, INC. PROFIT SHARING TRUST		
If "yes", have you reported the income from the trust?	X	
If "yes", have you reported the assets of the trust?	X	
If "yes", is this trust an "excepted" trust? Yes ☐ No ☒ or "qualified" trust?		X

	Yes	No
Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported?		
If "Yes," do you certify to all of the following? 1. They represent solely your spouse's or dependent child's financial interest or responsibility; 2. They are not, in any way, past or present, derived from your income, assets, or activities; 3. You neither derive, nor expect to derive, any financial or economic benefit from them; and 4. You do not have knowledge as to the composition of such interest or liabilities.		

Page Number ➤ 3

Schedule A

Reporting Individual's Name

HODEL, DONALD PAUL

Agency Use Only

Date of Filing (Month, Day, Year)

Spouse (S) or Dependent Child (DC)	Identification	Income 1/1/81 through 10/27/82																		Interests in Property						
		Type of Income (✓)							Category of Amount or Value (✓)											Valuation of Assets (✓)						
		Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	HODEL ASSOCIATES, INC. PROFIT SHARING TRUST, Lake Oswego, Oregon							Distribution			x						2,376		H		x at 10/28/82				
S	HODEL ASSOCIATES, INC. PROFIT SHARING TRUST, Lake Oswego, Oregon [Note: On December 31, 1981, the Trust owned a vendee's interest in a Land Sale Contract concerning a vacant residential lot in Yachats, Oregon. The original purchase price of the lot in 1980 was $22,000. In January, 1982, the Land Sale Contract was assigned by the Trust to Mr. and Mrs. Hodel, who personally assumed the contract indebtedness. As of such assignment, the estimated, fair market value of the land was $19,100 and the unpaid, principal contract balance was $13,112. The sole asset of the Trust at October 28, 1982 consisted of 1,066 shares of the Dean Witter Inter-Capital High Yield Fund, with a fair market value of $14,583. Such investment was derived from the proceeds of the May 20, 1982 liquidation of a $12,748 investment in the Dean Witter Inter-Capital Liquid Assets Fund, Inc., which, in turn, was							Distribution			x						2,376		H	x	at 10/28/82				

SF 278 - Financial Disclosure Report
(Rev. 6/81)

INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?	X	
PHILIP E. HODEL TESTAMENTARY TRUST If "yes", have you reported the income from the trust?		X
If "yes", have you reported the assets of the trust?		X
If "yes", is this trust an "excepted" trust? Yes X No ☐ or "qualified" trust?		X

	Yes	No
Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported?		
If "Yes," do you certify to all of the following? 1. They represent solely your spouse's or dependent child's financial interest or responsibility; 2. They are not, in any way, past or present, derived from your income, assets, or activities; 3. You neither derive, nor expect to derive, any financial or economic benefit from them; and 4. You do not have knowledge as to the composition of such interest or liabilities.		

Page Number ➤ 4

Schedule A

Reporting Individual's Name

HODEL, DONALD PAUL

Agency Use Only

Date of Filing (Month, Day, Year)

		Income 1/1/81 through 10/27/82																		Interests in Property						
		Type of Income (✓)							Category of Amount or Value (✓)											Valuation of Assets (✓)						
Spouse (S) or Dependent Child (DC)	Identification	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	derived from a liquidation on April 30, 1981 of the Trust's $11,083 investment in the Columbia Daily Income Co. money market fund. On January 28, 1982, Mr. Hodel resigned as sole trustee of the Profit Sharing Trust and was replaced by Mrs. Hodel, who presently is sole Trustee.].																								
	PHILIP E. HODEL TESTAMENTARY TRUST Portland, Oregon [Note: Philip E. Hodel, father of Mr. Hodel, died June 3, 1978. The August 4, 1972 will of Philip E. Hodel established a trust for the benefit of Rose Hodel, Mr. Donald Hodel's mother. During her life, she is entitled to all trust income and to so much of corpus as trustee determines necessary. Upon her death, remaining trust assets, if any, are to be divided equally between Mr. Hodel and his brother, Leslie E. Hodel. Mr. Hodel resigned as co-trustee of the trust, effective February 5, 1981 (the date of his confirmation as Under Secretary of							None											Not determinable by reporting individual.						

SF 278 - Financial Disclosure Report
(Rev 6/81)

INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?	☐	☐
If "yes", have you reported the income from the trust?	☐	☐
If "yes", have you reported the assets of the trust?	☐	☐
If "yes", is this trust an "excepted" trust? Yes ☐ No ☐ or "qualified" trust?	☐	☐

	Yes	No
Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported?	☐	☐
If "Yes," do you certify to all of the following? 1. They represent solely your spouse's or dependent child's financial interest or responsibility; 2. They are not, in any way, past or present, derived from your income, assets, or activities; 3. You neither derive, nor expect to derive, any financial or economic benefit from them; and 4. You do not have knowledge as to the composition of such interest or liabilities.	☐	☐

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Schedule A

Reporting Individual's Name

HODEL, DONALD PAUL

Agency Use Only

Date of Filing (Month, Day, Year)

		Income																	Interests in Property						
		Type of Income (✓)							Category of Amount or Value (✓)										Valuation of Assets (✓)						
Spouse (S) or Dependent Child (DC)	Identification	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	the Department of the Interior by the United States Senate), by means of a letter dated January 24, 1981, copy of which is attached hereto as Exhibit "A." The sole trustee of the trust presently is Leslie E. Hodel.																								
	[By reason of the agreements set forth in attached Exhibit "A," neither Mr. Hodel, his wife nor their dependent child has had knowledge, at any time after February 5, 1981, of the identity of assets held by, or any sources of income of, the Philip E. Hodel testamentary Trust, or of the value of Trust assets, or of any transactions of the Trust occurring after such date. This Trust, therefore, presently is an "excepted trust."																								
	[As of February 5, 1981, following the sale of certain Trust assets intended to eliminate any actual or potential conflict of interest, or even the appearance of such conflict, in connection with Mr. Hodel's service as the Under Secretary of the Department of the Interior, the holdings of the Trust were:																								

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(Rev. 6-81)

INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?		
If "yes", have you reported the income from the trust?		
If "yes", have you reported the assets of the trust?		
If "yes", is this trust an "excepted" trust? Yes ☐ No ☐ or "qualified" trust?		

	Yes	No
Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported?		
If "Yes," do you certify to all of the following? 1. They represent solely your spouse's or dependent child's financial interest or responsibility; 2. They are not, in any way, past or present, derived from your income, assets, or activities; 3. You neither derive, nor expect to derive, any financial or economic benefit from them; and 4. You do not have knowledge as to the composition of such interest or liabilities.		

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Schedule A
Reporting Individual's Name
HODEL, DONALD PAUL
Agency Use Only
Date of Filing (Month, Day, Year)

		Income																	Interests in Property						
		Type of Income (✓)							Category of Amount or Value (✓)										Valuation of Assets (✓)						
Spouse (S) or Dependent Child (DC)	Identification	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	STOCKS																								
	Washington National Corp. - 30 shares																		H	x	at 1/24/81				
	Washington National Corp. - #2 - 27 shares																		H	x	at 1/24/81				
	BONDS																								
	City of Ontario, Oregon Hospital $20,000 par value 8 1/2% due 1988																		H			x	at 1/24/81		
	City of Portland, Oregon G.O. Water $10,000 par value 2 3/4% due 1984																		H		x		at 1/24/81		
	Coos County [Oregon] Bay Area Hospital Dist. $5,000 par value 5.2% due 1985																		H	x			at 1/24/81		
	Oregon State Bd. of Higher Educ. Bldg. $5,000 par value 4.5% due 2001																		H	x			at 1/24/81		
	Oregon Veterans Welfare $10,000 par value 5.3% due 1997																		H		x		at 1/24/81		
	12 Federal Land Banks Consolidated Series D $12,000 par value 8.15%																		H		x		at 1/24/81		
	FUNDS																								
	Columbia Daily Income Company, Portland, Oregon (money market fund)																		H		x				
	Corporate Income Fund 6th Intermed. Ser. - c/o Merrill Lynch, Pierce, Fenner & Smith, Portland, Oregon (corporate bond portfolio)																		H			x			
	Municipal Investment Trust Fund 2nd Intermed. Ser. - c/o Merrill Lynch,																								

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INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?	☐	☐
If "yes", have you reported the income from the trust?	☐	☐
If "yes", have you reported the assets of the trust?	☐	☐
If "yes", is this trust an "excepted" trust? ☐ Yes ☐ No or "qualified" trust?	☐	☐

	Yes	No
Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported?	☐	☐
If "Yes," do you certify to all of the following? 1. They represent solely your spouse's or dependent child's financial interest or responsibility; 2. They are not, in any way, past or present, derived from your income, assets, or activities; 3. You neither derive, nor expect to derive, any financial or economic benefit from them; and 4. You do not have knowledge as to the composition of such interest or liabilities.	☐	☐

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Schedule A

Reporting Individual's Name
HODEL, DONALD PAUL

Agency Use Only
Date of Filing (Month, Day, Year)

Spouse (S) or Dependent Child (DC)	Identification	Income: Type of Income (✓): Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	Income: Category of Amount or Value (✓): None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	Interests in Property: Valuation of Assets (✓): Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	Pierce, Fenner & Smith, Portland, Oregon (municipal bond fund)																		H		x		at 1/24/81		
	OTHER JMB Income Properties, Ltd. VII, Chicago, Ill. - limited partnership interest purchased for $20,000 on 4/2/80 (owns shopping centers and office buildings in Cedar Rapids, Iowa; Clackamas, Oregon; Huron, S.D.; Philadelphia, Pa.; Schaumberg, Ill.																		C			x	at 1/24/81		
	[Neither Mr. Hodel, his spouse, nor their dependent child have any knowledge, one way or the other, whether any of the foregoing assets still are held by the Trust. The trustee of this Trust has agreed to furnish the United States Senate, the Department of Energy and the Office of Government Ethics with such information concerning this Trust as they may request.]																								

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INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?		
If "yes", have you reported the income from the trust?		
If "yes", have you reported the assets of the trust?		
If "yes", is this trust an "excepted" trust? ☐ Yes ☐ No or "qualified" trust?		

	Yes	No
Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported?		
If "Yes," do you certify to all of the following? 1. They represent solely your spouse's or dependent child's financial interest or responsibility; 2. They are not, in any way, past or present, derived from your income, assets, or activities; 3. You neither derive, nor expect to derive, any financial or economic benefit from them; and 4. You do not have knowledge as to the composition of such interest or liabilities.		

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Schedule A

Reporting Individual's Name

HODEL, DONALD PAUL

Agency Use Only

		Income 1/1/81 through 10/27/82																	Interests in Property						
		Type of Income (✓)							Category of Amount or Value (✓)										Valuation of Assets (✓)						
Spouse (S) or Dependent Child (DC)	Identification	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	[illegible]	[illegible]
	AMERICAN GUARANTY FINANCIAL CORP. 310 shares common stock	x							x										H	x	at 10/28/82				
	BETHLEHEM STEEL CORP. 100 shares common stock [Note: These securities sold on 1/27/81].	x			x					x									H	x	at 1/27/81				
	GENERAL TIRE & RUBBER CO. 102 shares common stock [Note: These securities sold on 1/27/81].				x			Net Loss	x										H	x	at 1/27/81				
	J. P. STEVENS, INC. 121 shares common stock	x								x									H	x	at 10/28/82				
	NEW IDRIA, INC. 1,000 shares common stock [Note: These securities converted 12/22/81 into securities of Buckhorn, Inc. shown below].	x						Exchange of shares			x						2,093		H	x	at 12/22/81				
	BUCKHORN, INC. 250 shares Series "A" conv. preferred stock and 113 shares common stock	x							x										H	x	at 10/28/82				
	OXFORD INDUSTRIES 100 shares common stock	x								x									H	x	at 10/28/82				

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INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?		
If "yes", have you reported the income from the trust?		
If "yes", have you reported the assets of the trust?		
If "yes", is this trust an "excepted" trust? ☐ Yes ☐ No or "qualified" trust?		

	Yes	No
Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported?		
If "Yes," do you certify to all of the following? 1. They represent solely your spouse's or dependent child's financial interest or responsibility; 2. They are not, in any way, past or present, derived from your income, assets, or activities; 3. You neither derive, nor expect to derive, any financial or economic benefit from them; and 4. You do not have knowledge as to the composition of such interest or liabilities.		

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Schedule A

Reporting Individual's Name

HODEL, DONALD PAUL

Agency Use Only

Date of Filing (Month, Day, Year)

Income 1/1/81 through 10/27/82

Spouse (S) or Dependent Child (DC)	Identification	Type of Income (✓)							Category of Amount or Value (✓)								Actual Amount	Date (Mo., Day, Yr.)	Interests in Property: Valuation of Assets (✓)						
		Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Only if "Other" Specified	Only if Honoraria	Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	[illegible]	[illegible]
	SEARS, ROEBUCK 101 shares common stock	X								X									H	X	at 10/28/82				
	PETTIBONE CORP. - $2,000 par value con. sub. debenture			X						X									H	X	at 10/28/82				
	CITY OF GRESHAM, OREGON - $10,000 par value bond. [Note: This security sold as of 12/15/81].			X	X			Net Loss	X										H		X	at 12/15/81			
	PORT OF MORROW, OREGON - $10,000 par value bond. [Note: This security sold as of 12/15/81].			X	X			Net Loss	X										H	X	at 12/15/81				
	STATE OF OREGON HOUSING FINANCE - $5,000 par value bond. [Note: This security sold as of 12/15/81].			X	X			Net Loss	X										H	X	at 12/15/81				
	INTERNAL REVENUE SERVICE Interest on income tax refunds			X						X									None						
	COLUMBIA GROWTH FUND [Note: This investment liquidated on 1/30/81].	X			X							X							H		X	at 1/30/81			
	DEAN WITTEP INTER-CAPITAL LIQUID ASSETS FUND	X									X								H		X	at 10/28/82			
	DEPT. OF INTERIOR FEDERAL CREDIT UNION			X						X									H	Less than $1,000					

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INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?		
If "yes", have you reported the income from the trust?		
If "yes", have you reported the assets of the trust?		
If "yes", is this trust an "excepted" trust? ☐ Yes ☐ No or "qualified" trust?		

	Yes	No
Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported?		
If "Yes," do you certify to all of the following? 1. They represent solely your spouse's or dependent child's financial interest or responsibility; 2. They are not, in any way, past or present, derived from your income, assets, or activities; 3. You neither derive, nor expect to derive, any financial or economic benefit from them; and 4. You do not have knowledge as to the composition of such interest or liabilities.		

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Schedule A

Reporting Individual's Name

HODEL, DONALD PAUL

Agency Use Only

Date of Filing (Month, Day, Year)

Spouse (S), Joint (J), or Dependent Child (DC)	Identification	Income 1/1/81 through 10/27/82 Type of Income (✓) Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	Category of Amount or Value (✓) None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	Interests in Property Valuation of Assets (✓) Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	[illegible]	[illegible]
	MUNICIPAL INVESTMENT TRUST FUND (104th Monthly Payment Series) 21 units.			X							X								H		X at 10/28/82				
	MUNICIPAL INVESTMENT TRUST FUND (3rd Monthly Payment Series) 4 units.			X						X									H	X at 10/28/82					
	Unimproved lot for single-family residence, Lake Havasu City, Arizona. Owned jointly with spouse. Purchased for $10,000 in 1969.							None	X										A/C		X at 10/28/82				
	Personal residence, Lake Oswego, Oregon. Owned jointly with spouse. Rented during 1981 and 1982. [Note: "Rent" income reflects gross rental income without deduction of expenses.]		X										X						A					X	
	Vacant residential lot, Yachats, Oregon, pursuant to land sale contract.							None	X										A			X			
	VIRGINIA NATIONAL BANK Arlington, Virginia			X						X									H	Less than $5,000					

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INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?..........................	☐	☐
If "yes", have you reported the income from the trust?..........................	☐	☐
If "yes", have you reported the assets of the trust?..........................	☐	☐
If "yes", is this trust an "excepted" trust?... Yes ☐ No ☐ or "qualified" trust?....	☐	☐

	Yes	No
Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported?	☐	☐
If "Yes," do you certify to all of the following? 1. They represent solely your spouse's or dependent child's financial interest or responsibility; 2. They are not, in any way, past or present, derived from your income, assets, or activities; 3. You neither derive, nor expect to derive, any financial or economic benefit from them; and 4. You do not have knowledge as to the composition of such interest or liabilities.	☐	☐

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Schedule A

Reporting Individual's Name

HODEL, DONALD PAUL

Agency Use Only

Date of Filing (Month, Day, Year)

Spouse (S) or Dependent Child (DC)	Identification	Income 1/1/81 through 10/27/82																		Interests in Property						
		Type of Income (✓)							Category of Amount or Value (✓)											Valuation of Assets (✓)						
		Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	GARIBALDI MANAGEMENT COMPANY (Garibaldi, Oregon marina, moorage and recreational vehicle park known as Old Mill Marina) one percent limited partnership interest. Purchased for $25,000 in 1980.							None	x										A/C			x			
	Douglas & Lomason 100 shares common stock	x							x										H	x					

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PURCHASES, SALES, AND EXCHANGES

This schedule is applicable only in the case of annual and termination reports.

Page Number ► 1		Schedule B
Reporting Individual's Name DONALD PAUL HODEL		
Agency Use Only		
Date of Filing (Month, Day, Year)		

Report Applicable Transactions, Even If Also Reported on Schedule A

S or DC	Identification of Property (real and personal)	Type of Transaction			Date (Month, Day, Year)		Category of Amount or Value (✓)					
		Purchase	Sale	Exchange	Purchase	Sale or Exchange	$1,001 to $5,000	$5,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
	NOT APPLICABLE.											
	Reporting individual is a nominee.											

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GIFTS AND REIMBURSEMENTS

This schedule is applicable only in the case of annual and termination reports.

Page Number ➤	1	Schedule C
Reporting Individual's Name DONALD PAUL HODEL		
Agency Use Only		
Date of Filing (Month, Day, Year)		

NOT APPLICABLE.
Reporting individual is a nominee.

I. Lodging, Transportation, Food and Entertainment—*List each source totaling $250 or more in value*

S or DC	Source *(Name and Address)*	Brief Description	Value

II—All Other Gifts—*List each source totaling $100 or more in value*

S or DC	Source *(Name and Address)*	Brief Description	Value

III. Reimbursements—*List each source totaling $250 or more in value*

S	Source *(Name and Address)*	Brief Description	Value

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This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name	Agency Use Only Date of Filing (Month, Day, Year)	Page Number ➤	Schedule
DONALD PAUL HODEL		1	D

LIABILITIES

S or DC	Name and Address of Creditor	Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term	Category of Amount or Value (✓) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
	Richard C. and Ruth L. Schmunk 2650 Main Street, Springfield, Oregon 97477	Land Sale Contract on vacant residential lot in Yachats, Oregon, dated March 18, 1980, which was assigned to, and assumed by, Mr. and Mrs. Hodel pursuant to Assignment of Land Sale Contract and Novation, dated January 28, 1982. Current principal contract balance, plus interest at 11% per annum, payable in annual installments ending March 1, 1985.	X				

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Hodel Associates, Inc. 2825 Dellwood Drive, Lake Oswego, Oregon	Energy Consulting Firm	President and Director	Jan. 1978	Feb. 1981
Hodel Associates, Inc. Profit Sharing Trust 2825 Dellwood Drive, Lake Oswego, Oregon	Profit Sharing Trust for Hodel Associates, Inc.	Trustee	Jan. 1979	Jan. 1982
Cascade Water Power Development Corporation 1105 Commonwealth Building, Portland, Oregon	Developer of small hydro projects	President and Director	Jan. 1981	Jan. 1981

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

Source (Name and Address)	Brief Description of Duties
Hodel Associates, Inc. 2825 Dellwood Drive, Lake Oswego, Oregon	President and Director until February 5, 1981. Overall responsibility for rendition of consulting services to clients of Hodel Associates, Inc. The clients of Hodel Associates, Inc. who paid compensation to it in excess of $5,000 in any one year (1980 to date) are shown on attached Exhibit "B."
National Electric Reliability Council Research Park, Terhune Road, Princeton, New Jersey	President and Director (1978 - 1980)

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date (Mo., Day, Yr.)
Informal agreement with Hodel Associates, Inc., of which reporting individual formerly was president and co-owner, not to terminate Hodel Associates, Inc. Profit Sharing Trust, so that reporting individual and spouse may remain beneficiaries of such trust. As a consequence, vested account in profit sharing trust will not be terminated. On January 28, 1982, the Board of Directors of Hodel Associates, Inc., consisting of the spouse of reporting individual, adopted resolutions which terminated the profit sharing plan, but continued the existence of the profit sharing trust.	Hodel Associates, Inc., Donald Paul Hodel and Barbara S. Hodel	Feb. 5, 1981 and Jan. 28, 1982

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This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name	Agency Use Only Date of Filing (Month, Day, Year)	Page Number	Schedule
Donald Paul Hodel		2	D

LIABILITIES

S or DC	Name and Address of Creditor	Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term	Category of Amount or Value (✓) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
U.S. National Committee, World Energy Conference 1620 "I" Street, N.W., Washington, D.C.	Non-profit - professional association	Director	Feb. 1979	Jan. 1981
Lutheran Family Service 635 N.W. 18th Avenue, Portland, Oregon	Non-profit - family counseling	Fund Drive Chairman	Jan. 1979	Jan. 1982
United States Department of Energy 1000 Independence Avenue, S.W., Washington, D.C.	Federal Department	Consultant - Texas Joint Interconnection Study	Dec. 1979	Feb. 1981
Central and South West Services, Inc. 2700 One Main Place, Dallas, Texas 75250	Utility Services Company	Ibid; consultant - d.c. intertie study	Dec. 1979 Oct. 1980	Feb. 1981 Feb. 1981

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

Source (Name and Address)	Brief Description of Duties

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date (Mo., Day, Yr.)

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This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name Donald Paul Hodel	Agency Use Only Date of Filing (Month, Day, Year)	Page Number ➤	3	Schedule D

LIABILITIES

S or DC	Name and Address of Creditor	Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term	Category of Amount or Value (✓) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
City of Austin, Texas P.O. Box 1088, Austin, Texas 78767	Municipality	Consultant - Texas Joint Interconnection Study	Dec. 1979	Feb. 1981
City Public Service of San Antonio P.O. Box 1711, San Antonio, Texas 78296	Municipal utility	Ibid.	Dec. 1979	Feb. 1981
Committee on Power for the Southwest, Inc. 400 South Broadway, Edmond, Oklahoma 73034	Group of utilities	Ibid.	Dec. 1979	Feb. 1981
Gulf States Utilities Company 285 Liberty Avenue, Beaumont, Texas 77701	Utility	Ibid.	Dec. 1979	Feb. 1981

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

Source (Name and Address)	Brief Description of Duties

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date (Mo., Day, Yr.)

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This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name	Agency Use Only Date of Filing (Month, Day, Year)	Page Number	Schedule
Donald Paul Hodel	[redacted]	4	D

LIABILITIES

S or DC	Name and Address of Creditor	Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term	Category of Amount or Value (✓) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Houston Lighting and Power Company P.O. Box 1700, Houston, Texas 77001	Utility	Consultant - Texas Joint Interconnection Study	Dec. 1979	Feb. 1981
Lower Colorado River Authority P.O. Box 220, Austin, Texas 78767	Governmental	Ibid.	Dec. 1979	Feb. 1981
Middle South Utilities 225 Baronne Street, New Orleans, Louisiana 70161	Utility	Ibid.	Dec. 1979	Feb. 1981
Texas Utilities, c/o Texas Electric Service Company P.O. Box 970, Fort Worth, Texas 76101	Utility Services Company	Ibid.	Dec. 1979	Feb. 1981

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

Source (Name and Address)	Brief Description of Duties

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date (Mo., Day, Yr.)

SF 278—Financial Disclosure Report

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name	Agency Use Only Date of Filing (Month, Day, Year)	Page Number ➤	Schedule
Donald Paul Hodel		5	D

LIABILITIES

S or nc	Name and Address of Creditor	Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term	Category of Amount or Value (✓) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Boeing Engineering and Construction Company P.O. Box 3707, Seattle, Washington 98124	Engineering and Construction	Senior Advisory Board - Technical Integrator Study	May 1979	Feb. 1981
Boeing Environmental Products P.O. Box 3707, Seattle, Washington 98124	Alternate energy generating facilities manufacturer	Consultant - wind power project	Dec. 1980	Feb. 1981
Fording Coal, Ltd. 205 Ninth Avenue, S.E., Calgary, Alberta	Coal company	Advisor - power marketing	March 1980	Jan. 1981
Pacific Power and Light Company 920 S.W. Sixth Avenue, Portland, Oregon 97204	Utility	Policy advisor to senior management.	April 1980	Jan. 1981

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

Source (Name and Address)	Brief Description of Duties

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date (Mo., Day, Yr.)

SF 278—Financial Disclosure Report (Rev. [illegible])

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name	Agency Use Only Date of Filing (Month, Day, Year)	Page Number	Schedule
Donald Paul Hodel		6	D

LIABILITIES

S or DC	Name and Address of Creditor	Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term	Category of Amount or Value (✓) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Manning Consultant, Ltd. 9990 Jasper Avenue, Edmonton, Alberta	Utility Consultants	Consultant-Canadian Interconnection Study	Sept. 1980	Feb. 1981
Western Electric Power Grid Study Secretariat, c/o Sherritt Gordon Mines, Ltd., 602 11th Ave., S.W. Calgary, Alberta	Government interconnection research task force	Ibid.	Sept. 1980	Feb. 1981
Portland General Electric Company 121 S.W. Salmon Street, Portland, Oregon 97204 (and)	Utility	Arbitrator	June 1980	Feb. 1981
Confederated Tribes of Warm Springs Reservation of Oregon Warm Springs, Oregon	Indian Tribes	Arbitrator	June 1980	Feb. 1981

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

Source (Name and Address)	Brief Description of Duties

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date (Mo., Day, Yr.)

SF 278—Financial Disclosure Report
(Rev. 6-81)

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name	Agency Use Only Date of Filing (Month, Day, Year)	Page Number ➤	Schedule
DONALD PAUL HODEL		7	D

LIABILITIES

S or DC	Name and Address of Creditor	Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term	Category of Amount or Value (✓) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Power Engineers Hailey, Idaho 83333	Utility engineering and consulting	Advisor-power supply matters for Ferry County, Wn. P.U.D.	Oct. 1980	Feb. 1981
National Electric Reliability Council Research Park, Terhune Road, Princeton, New Jersey	Non-profit - electric power system reliability	President and Director	Apr. 1978	Apr. 1980
Electric Power Research Institute P.O. Box 10412, Palo Alto, California 94303	Non-profit - electric power research	Advisor - emergency planning	Aug. 1980	Dec. 1980
Dallas Power and Light Company 1506 Commerce Street, Dallas, Texas 75201	Utility	Consultant	May 1980	May 1980

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

Source (Name and Address)	Brief Description of Duties

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date (Mo., Day, Yr.)

SF 278—Financial Disclosure Report
[illegible]

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name	Agency Use Only Date of Filing (Month, Day, Year)	Page Number ➤	8	Schedule D
DONALD PAUL HODEL				

LIABILITIES

S or DC	Name and Address of Creditor	Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term	Category of Amount or Value (✓) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Idaho Power Company Boise, Idaho	Utility	Consultant - establishment of construction service co.	July 1978	April 1980
Montana Power Company 40 East Broadway, Butte, Montana 59701	Utility	Ibid.	July 1978	April 1980
Pacific Power and Light Company 920 S.W. Sixth Avenue, Portland, Oregon 97204	Utility	Ibid.	July 1978	April 1980
Portland General Electric Company 121 S.W. Salmon Street, Portland, Oregon 97204	Utility	Ibid.	July 1978	April 1980

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

Source (Name and Address)	Brief Description of Duties

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date (Mo., Day, Yr.)

SF 278—Financial Disclosure Report
(Rev. 6-81)

LIABILITIES

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name DONALD PAUL HODEL	Agency Use Only Date of Filing (Month, Day, Year)	Page Number ➤ 9	Schedule D

$ or DC	Name and Address of Creditor	Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term	Category of Amount or Value (✓) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Puget Sound Power and Light Company Puget Power Building, Bellevue, Washington 98009	Utility	Consultant-establishment of construction service co.	July 1978	April 1980
Washington Water Power Company 1411 East Mission Avenue, Spokane, Washington 99220	Utility	Ibid.	July 1978	April 1980
Occidental Geothermal 5000 Stockdale Highway, Bakersfield, California 93309	Alternate energy development	Advisor-Marketing	Sept. 1980	Oct. 1980
Oregon Department of Energy Salem, Oregon	State of Oregon agency	Member-Governor's Alternate Energy Development Comm.	Oct. 1979	Dec. 1980

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

Source (Name and Address)	Brief Description of Duties

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date (Mo., Day, Yr.)

SF 278 - Financial Disclosure Report
(Rev. 6.81)

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name	Agency Use Only Date of Filing (Month, Day, Year)	Page Number ➤	Schedule
DONALD PAUL HODEL		10	D

LIABILITIES.

S or DC	Name and Address of Creditor	Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term	Category of Amount or Value (✓) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Idaho Department of Energy Boise, Idaho	State of Idaho agency	Advisor-Alternate Energy Commission	Nov. 1980	Nov. 1980
Co-trustee of testamentary trust under will of Philip E. Hodel 2240 S.W. Sunset Boulevard, Portland, Oregon 97201 (See attached Exhibit "A").	Testamentary Trust	Co-trustee	Jan. 1980	Feb. 1981

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

Source (Name and Address)	Brief Description of Duties

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date (Mo., Day, Yr.)

EXHIBIT "A"

January 24, 1981

Mr. Leslie E. Hodel
2240 S. W. Sunset Boulevard
Portland, Oregon 97201

Re: Philip E. Hodel Testamentary Trust

Dear Les:

As you know, I will be nominated as Under Secretary of the Interior. The appointment will not become effective until confirmation by the United States Senate. To avoid any actual or potential conflict of interest, or even the appearance of conflict of interest, it will be necessary for me to resign as Co-Trustee of the Testamentary Trust established by Dad's Will. Accordingly, this letter constitutes my resignation, to be effective concurrently with Senate confirmation of my appointment as Under Secretary, as Co-Trustee of the trust established under the Last Will and Testament of Philip E. Hodel, dated August 4, 1972 (the "Trust").

Immediately upon the effective date of my resignation as Co-Trustee, please take such steps as may be necessary to change the name in which all assets of the Trust are held and/or the name in which any account is maintained in behalf of the Trust.

Article VI, paragraph "B" of the Will provides that, upon Mother's death, the Trust shall terminate and the remaining Trust assets, if any, shall be distributed free of Trust equally to you and to me. Prior to her death, I have no right to receive any income or corpus of the Trust. Except as set forth below, it is absolutely essential that you agree that, during the entire period of my tenure as Under Secretary, you will refrain from directly or indirectly furnishing me, my wife Barbara, or my son David with any knowledge or information as to any of the Trust holdings, or any of the sources of Mother's income from the Trust, or any transactions of the Trust. In the event of Mother's death during my tenure of office, you are not to distribute to me any portion of the assets of the Trust nor furnish me with any information concerning Trust assets without further, written instructions from me as to the distribution of those assets, the holding of which by me may be prohibited. At my request, you are to furnish Government agencies with a listing of assets of the Trust.

The applicable federal conflicts of interest statutes and regulations apparently have been interpreted by the Government to prohibit my continued holding of a fifty percent remainderman's interest in the Trust if the Trust owns certain types of securities or other property, specifically, securities of companies engaged in "underground or surface coal mining operations." You will receive a letter from the Deputy Department Ethics Counselor of the Department of Interior, who will inform you of the holdings of the Trust which are prohibited. You have agreed that, upon receiving such information, you immediately will sell all such securities. Mother has informed me of her consent to the sale. Please furnish me with written evidence of the sale, such as broker's confirmations or otherwise.

You also have agreed that, during the entire period of my tenure as Under Secretary, you will not permit the Trust to acquire any holdings in the securities or properties of companies engaged in underground or surface coal mining operations and that, when making purchases in behalf of the Trust, you will obtain the specific representation of the Trust's stockbroker that the subject investment will not fall within such category. Moreover, you have agreed that, if you should be informed at any future time during my tenure, that the Trust holds securities of a company which, subsequent to today, becomes involved in underground or surface coal mining operations, you will cause the Trust immediately to dispose of such securities.

I greatly regret having to resign as Co-Trustee because it leaves you with the sole burden of managing the Trust assets for Mother, and I certainly would have preferred not to ask you to dispose of Trust assets on my account. However, I have no alternative in the circumstances. Please sign and return to me promptly the enclosed duplicate copy of this letter whereby you acknowledge my resignation as of the date described above and agree to abide by my instructions as set forth herein.

Sincerely,

Donald Paul Hodel

Donald Paul Hodel

The undersigned acknowledges the resignation of Donald Paul Hodel as Co-Trustee of the Trust established under the

Last Will and Testament of Philip E. Hodel, effective as of the date of confirmation of Donald Paul Hodel as Under Secretary of the Interior. The undersigned hereby agrees to abide by the instructions and agreements set forth in the foregoing letter.

Dated this 24th day of January, 1981.

Leslie E. Hodel
Leslie E. Hodel
Co-Trustee

Enclosure

cc: Mrs. Rose Hodel

EXHIBIT "B"

SEE SCHEDULE "D"

DONALD PAUL HODEL

CLIENTS OF HODEL ASSOCIATES, INC.

COMPENSATION OVER $5,000 PAID BY ANY ONE SOURCE IN ANY YEAR

1980

Central and South West Services, Inc. 2700 One Main Place Dallas, Texas 75250	(Consultant-Texas Joint Interconnection Study and d.c. intertie study)
Houston Lighting and Power Co. P.O. Box 1700 Houston, Texas 77001	(Consultant-Texas Joint Interconnection Study)
Pacific Power and Light Company Public Service Building 920 S.W. Sixth Avenue Portland, Oregon 97204	(Policy advice to senior management)
Texas Utilities c/o Texas Electric Service Co. P.O. Box 970 Fort Worth, Texas 76101	(Consultant-Texas Joint Interconnection Study)

1981 - NONE

1982 - NONE

DONALD PAUL HODEL

EXHIBIT 3

POTENTIAL CONFLICTS OF INTEREST AND THEIR RESOLUTION

Investments

SF-278 describes investments owned personally by me, by my wife, and by the Hodel Associates, Inc. Profit Sharing Trust. None of these investments are believed by me to pose the risk of an actual or potential conflict of interest, or even the appearance of a conflict of interest, with my official duties as Secretary of Energy.

SF-278 refers to a testamentary Trust established under the August 4, 1972 will of my father, Philip E. Hodel, who died June 3, 1978. The Trust beneficiary is Rose Hodel, my mother. During her life, she is entitled to all Trust income and to so much of the corpus as the trustee determines necessary. Upon her death, the remaining Trust assets, if any, are to be divided equally between my brother, Leslie E. Hodel, and myself. I am informed that the Trust is being regarded as an "Excepted Trust" from and after February 5, 1981. In conformance with a January 24, 1981 letter agreement between my brother, who is trustee of the Trust, and me, a copy of which is attached to SF-278, I have received no information of any kind since February 5, 1981 concerning the assets, income, or transactions of the Trust. Attached hereto as Exhibit 3-A is a true copy of a November 19, 1982 letter agreement between the trustee and me, wherein we agree that, during my tenure as Secretary of Energy, no such information in regard to the Trust will be furnished to me, but that the trustee, upon specific request, will provide information concerning the Trust to the Senate, to the Department of Energy Ethics Counselor, and/or to the Office of Government Ethics. In the circumstances, the Trust's investments would not pose the risk of an actual or potential conflict of interest, or even the appearance of a conflict of interest, with my official duties as Secretary.

It is my intention, during my tenure as Secretary, not to acquire directly or through the Hodel Associates, Inc. Profit Sharing Trust financial interests known to me to involve actual or potential conflict of interest, or even the appearance of conflict of interest, with my official duties as Secretary.

Relationships

Attached hereto as Exhibit 3-B is a November 22, 1982 memorandum, entitled "Statement of Agency Ethics Official for Senate Committee," which I received on that date from the Department of Energy's Assistant General Counsel for Standards of Conduct. After having reviewed the attached SF-278 and Form DOE-460 (Report on Prior Employment) which I furnished the Department, he has certified that "the information contained therein discloses no conflict of interest under applicable law and regulations."

DONALD PAUL HODEL

EXHIBIT 3 (continued) 2

I do not believe any of my prior relationships pose the risk of an actual or potential conflict of interest with my official duties as Secretary of Energy. Nevertheless, I am mindful of my responsibility to avoid even the appearance of a conflict of interest, and it is my personal desire to act in that manner. The Committee should be informed that:

1. As reflected in SF-278, I was a member of the Senior Advisory Board to Boeing Engineering & Construction. Such consulting services were rendered by me in connection with BEC's performance of its contract with the Department of Energy (Contract No. DE-AC14-79ET37106, later No. DE-AC06-79ET37106). My present understanding is that BEC'performance has been completed, but that final payment and customary Departmental audit procedures have not occurred. It is my intention not to participate in any decisions concerning payment upon, or audit of, such contract.

2. As reflected in SF-278, I served as a consultant to a group of public and private utilities in what was known as the Texas Joint Interconnection Study (the "TJIS"). That study was undertaken in a proceeding before the Federal Energy Regulatory Commission entitled Central Power and Light Company, et al., Docket No. EL 79-8 (the "FERC Proceeding"). Although my present understanding is that the FERC Proceeding has been concluded, it is my intention not to participate in the FERC Proceeding in the event it is reopened for any reason.

It is my understanding that the foregoing recusals would not prevent my complying with the terms of any subpoena issued by a court or agency of competent jurisdiction which required me to give testimony in regard to my prior consulting services to the Senior Advisory Board or to the TJIS, nor prohibit me from participating in the formulation or promulgation of rules of general application.

In the event the Department of Energy Ethics Counselor informs me that any of my prior relationships create an actual or potential conflict of interest with my duties as Secretary, or even the appearance of a conflict of interest with such duties, or in the event I draw such conclusion myself, I shall consult with the Department Ethics Counselor and, in light thereof, then shall take such remedial steps as may be required by applicable statutes or regulations or which otherwise appear to me to be appropriate in the circumstances.

Exhibit 3-A

2240 South West Sunset Blvd.
Portland, Oregon 97201

November 19, 1982

Honorable Donald Paul Hodel
Secretary of Energy
Washington, D. C. 20585

Re: Philip E. Hodel Testamentary Trust

Dear Don:

This letter will confirm the agreement I made with you on November 5, 1982, which is intended to update the agreement set forth in your January 24, 1981 letter to me, upon which I noted my agreement on January 24, 1981. We both recognize that such letter was written in connection with your appointment as Under Secretary of the Department of the Interior and that, although we have continued to adhere strictly to the requirements of such letter to this date, it probably is worthwhile to memorialize our agreements which will apply to the Philip E. Hodel Testamentary Trust during your tenure as Secretary of Energy.

During the entire period of your tenure as Secretary of Energy, I will refrain directly or indirectly from furnishing you, your wife Barbara, or son David with any knowledge or information as to any of the Trust holdings, or of any of the sources of mother's income from the Trust, or any transactions of the Trust.

Prior to mother's death, you have no right to receive any income or corpus of the Trust. In the event of mother's death during your tenure as Secretary of Energy, I shall not distribute to you any portion of any assets of the Trust or furnish you with any information concerning Trust assets or income without further written instruction from you as to the applicable requirements of federal law and regulations.

Honorable Donald Paul Hodel
Page Two
November 19, 1982

It is my understanding that the Trust is being regarded as an "Excepted Trust" from and after February 5, 1981, and that, therefore, it will not be necessary for me to furnish appropriate ethics officials with information concerning the holdings, income or transactions of the Trust. Nevertheless, I am perfectly agreeable to furnishing any such information to the United States Senate, the Department of Energy, and/or the Office of Government Ethics upon its or their specific request.

Sincerely yours,
Leslie E Hodel
Leslie E. Hodel
Trustee
Philip E. Hodel Testamentary Trust

I hereby agree to abide by the instructions and arrangements set forth in the foregoing letter.

Dated this 23d day of November, 1982.

Donald Paul Hodel
Donald Paul Hodel

cc: Mrs. Rose Hodel

Exhibit 3-B

Department of Energy
Washington, D.C. 20585

NOV 22 1982

Memorandum for Donald Paul Hodel
The Secretary

From: Ralph D. Goldenberg
Assistant General Counsel
for Standards of Conduct

Subject: Statement of Agency Ethics Official for Senate Committee

This memorandum is intended to serve as a statement from the designated agency ethics official of this Department, as required by question 6 (page 5) of the Statement for Completion by Presidential Nominees that you are submitting to the United States Senate Committee on Energy and Natural Resources in connection with your nomination for the position of Secretary of Energy. I have reviewed your Standard Form 278 (Financial Disclosure Report) and your Form DOE-460 (Report on Prior Employment), both dated November 5, 1982, and have certified that the information contained therein discloses no conflict of interest under applicable laws and regulations.

As a supervisory employee of the Department, you are prohibited by section 602(a) of the DOE Organization Act (Pub. L. 95-91) from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any energy concern. The term "energy concern" is defined in section 601(b) of the Act as any entity "significantly engaged in the business" of any of a variety of activities related to energy production, distribution, sale, or research and development, or any entity significantly engaged in such research and development pursuant to a DOE-funded program irrespective of whether it otherwise engages in such business. The term also includes any entity holding an interest in property from which an energy resource is commercially produced or obtained.

Further, section 208, title 18, United States Code, prohibits you from participating personally and substantially, as a Government employee, in any particular matter in which, to your knowledge, you have, or your spouse, minor child, partner, organization in which you are serving as officer, director, trustee, partner, or employee, or any person or organization with whom you are negotiating or have any arrangement concerning prospective employment has, a financial interest. Accordingly, you should avoid participation in any particular matter the outcome of which could have a direct and predictable effect on any such financial interests.

With regard to the Philip E. Hodel Testamentary Trust described on pages 4 through 7, Schedule A, of your Standard Form 278, you resigned as co-trustee effective February 5, 1981, leaving your brother as sole trustee. Since that date, your brother has abided by your instruction not to furnish, directly or indirectly, you, your wife, or your son David with any knowledge or information as to trust holdings, income, or transactions. It is my understanding that this instruction will continue in effect during your tenure as Secretary of Energy. It is also my understanding that, after reviewing the trust and the non-disclosure arrangement described above, the Office of Government Ethics has deemed it to be an "excepted trust" (within the meaning of 5 C.F.R. §734.402), the identity of the assets of which need not be disclosed on your Standard Form 278.

With respect to prior employment, section 606(a) of the DOE Organization Act prohibits a supervisory employee, for a period of one year after terminating any employment with any energy concern, from knowingly participating in any Department proceeding [1] in which his former employer is substantially, directly, or materially involved, other than in a rulemaking proceeding which has a substantial effect on numerous energy concerns. Since it has been more than one year since you were employed by any energy concern, this restriction will not apply to your service in the Department.

In addition, section 606(b) of the Act prohibits a supervisory employee, for a period of one year after commencing service in the Department, from knowingly participating in any Department proceeding for which he had direct responsibility, or in which he participated substantially and personally, while in the employment of any energy concern within the previous five calendar years. The prior employment described in your Form DOE-460 does not suggest to me any Department proceeding from which section 606(b) would require your disqualification during your first year in the Department.

Please let me know if I can be of further assistance.

---

[1] The term "Department proceeding" is defined in section 1010.103(h) of DOE's Conduct of Employees regulations as "any judicial proceeding, Department hearing, application, rulemaking, order, license, contract, grant, award, fund transfer, claim, controversy, charge, accusation, or arrest, in which the Department is directly involved."

DONALD PAUL HODEL

EXHIBIT 4

LITIGATION

Administrator - Bonneville Power Administration

By reason of Rule 25(d)(1), Federal Rules of Civil Procedure, I no longer am deemed a party to actions which had involved me in my former capacity as Administrator of Bonneville Power Administration. I do not know whether any such actions remain pending.

Under Secretary - Department of the Interior

I am informed by the Office of the Solicitor of the Department of the Interior that, to its best knowledge, the following two, pending cases are the only ones involving that Department in which I am named as a party:

> Jackson Hole Alliance for Responsible Planning v. Watt, Civil Action No. C82-0409 (D. Wyo.), filed October 8, 1982. I am named as one of the defendants in my former, official capacity and individually. The action seeks damages, injunctive relief and the setting aside of a permit to drill for oil and gas in the proposed Gros Ventre Wilderness in Wyoming. Pursuant to 28 C.F.R. 50.15 (2), I have requested the Department of Justice to represent me in my individual capacity inasmuch as I acted within the scope of my employment as Under Secretary in all undertakings pertinent to this action.
>
> Sierra Club, Inc. v. Watt, Civil Action No. 82-700 (D.D.C.), filed March 10, 1982. I am named as one of the defendants in my former, official capacity. The action seeks to declare unlawful the transfer of Admiralty Island National Monument to two Alaska Native Corporations formed under the Alaska Native Claims Settlement Act.

Secretary of Energy

I am informed by the General Counsel of the Department of Energy that, to his best knowledge, the following four, pending cases are the only ones involving that Department in which I am named as a party:

> Atlantic Richfield v. U.S. Department of Energy, Civil Action No. 82-3269 (D.D.C.), filed November 16, 1982. I am named as one of the defendants in my official capacity, but have had no personal involvement in the matter prior to commencement of this litigation. The action seeks a declaratory judgment that the Department's Office of Hearings and Appeals may not compel production of documents.

Crown Central Petroleum Corp. v. Department of Energy, Civil Action No. 82-3283 (D.Md.), filed November 10, 1982. I am named as one of the defendants in my official capacity, but have had no personal involvement in the matter prior to commencement of this litigation. The action seeks computer materials generated by the Economic Regulatory Administration during the course of an audit of 1973-78 prices.

Natural Resources Defense Council v. Vaughan, Civil Action No. C82-3173 (D.D.C.), filed November 8, 1982. I am named as one of the defendants in my official capacity, but have had no personal involvement in the matter prior to commencement of this litigation. The action seeks a declaratory judgment, injunctive relief and an order to comply with NEPA in connection with start-up of the L-Reactor at the Savannah River Plant in South Carolina.

State of Arkansas v. Hodel, Civil Action No. LR-C-82-80 (E.D.Ark.), filed November 12, 1982. I am named as one of the defendants in my official capacity, but have had no personal involvement in the matter prior to commencement of this litigation. The action seeks to prevent implementation of a marketing plan of the Southwestern Power Administration.

In addition to the foregoing cases, Rule 25(d)(1), Federal Rules of Civil Procedure will result in my being substituted as a party in those cases where my predecessor(s) as Secretary of Energy had been named as a party.

BIOGRAPHICAL STATEMENT
OF
MARTHA O. HESSE

Martha O. Hesse was named Assistant Secretary for Management and Administration, U.S. Department of Energy (DOE) on November 10, 1982, pursuant to a recess appointment granted by President Reagan. The President submitted to the Senate on November 15, 1982, the nomination of Ms. Hesse as Assistant Secretary.

In this position, Ms. Hesse serves as the Department's chief administrative officer, reporting directly to Secretary of Energy Donald Paul Hodel. Her duties, in addition to administrative and personnel management, include responsibility for contracting and procurement, and the financial and accounting activities of the Department.

Before joining DOE, Ms. Hesse was Executive Director of the President's Task Force on Management Reform, located in the Office of Management and Budget.

From February 1981 until her White House assignment, Ms. Hesse was Associate Deputy Secretary of Commerce, where she provided direct support to the Deputy Secretary in administering the overall operations of the Department and resolved major policy and program operation issues that arose between the bureaus of the Department.

A prominent Chicago businesswoman, Ms. Hesse in 1969 became director and chief operating officer of SEI Information Technology in Chicago. As cofounder of this professional services company, she held key management positions and directed the company's business activities.

From 1966 to 1969, Ms. Hesse was Director of the Data Management Division, American Hospital Association. From 1964 to 1966, she was a research analyst with the Blue Shield Association.

Ms. Hesse, 40, attended the University of Iowa, majoring in psychology, and received an MBA (The Executive Program) from the University of Chicago in 1979.

November 1982

UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Hesse (LAST) Martha (FIRST) Ossian (OTHER)

Position to which nominated: Assistant Secretary, Management and Administration

Date of nomination: 11-10-82

Date of birth: 14 (DAY) 08 (MONTH) 42 (YEAR)

Place of birth: Hattiesburg, Mississippi

Marital status: Single

Full name of spouse:

Name and ages of children: None

Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of Iowa	1960-1964		
Northwestern University	1976-1977		
University of Chicago	1977-1979	MBA	1979

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates.

Research Analyst, National Blue Shield, Chicago, Ill., 1964-1966

Research Associate, National Opinion Research Center, University of Chicago, Chicago, Ill., 1966-1967

Director, Division of Data Management, American Hospital Association, Chicago, Ill., 1967-1969

Consultant, Compucare, Inc., Chicago, Ill., 1969-1970

Director, Information Services Center, American College of Hospital Administrators Chicago, Ill., 1971-1977

Employment record—Continued

Director and Chief Operating Officer, SEI Information Technology, Chicago, Ill., 1969-1980. Associate Deputy Secretary, US Department of Commerce, Washington, DC, 2/6/81-11/10/82. In May, 1982, I was detailed to the Office of Management and Budget as Executive Director, President's Task Force on Management Reform.

Military service: Enter all military service if not included above: service, dates, rank, type of discharge.

None.

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

None.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Data Processing Management Association	None.	1975-1977

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written.

None.

(I participated in the development of several manuals on current medical/procedural terminology while employed by Blue Shield Association. I do not recall the exact titles, and do not consider that my efforts would rise to the level of authorship.)

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I am currently an employee of the Federal government.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

I have no such plans.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Does not apply.

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

There are none.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

There are none.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

There are none.

The Senate is considering the President's nomination of me to be the Assistant Secretary of Management and Administration of the Department of Energy. I submit the following qualifications for your consideration: more than 17 years of management experience in administrative positions which include 15 years in the private sector and 2 years in the Federal Government.

In the private sector I served as Director and Chief Operating Officer of a professional services company which I cofounded. I held key management positions and directed the company's business and financial planning and operations. Under my direction the company grew to a multimillion dollar a year operation without any outside financing. Some of my significant management accomplishments included developing corporate strategies, marketing approaches, and the organizational structure. Specifically, I determined lines of the business to enter, established budget and operating plans, identified and secured clients, and recruited and managed the staff.

My opportunity to serve in the Federal Government in the past two years has augmented and strengthened those attributes gained from my experience in the private sector. As the Associate Deputy Secretary of Commerce I provided direct support to the Deputy Secretary in administering the overall operations of the Department and resolved major policy and program operation issues that arose between the bureaus of the Department.

As an indication of the quality of my experience in the private and public sector, I was appointed Executive Director of President Reagan's Task Force on Management Reform. In this position I was able to use the skills and knowledge from my professional experience to develop a long-term program for restructuring and improving the management systems of the Federal Government.

I believe that my background in administrative management unquestionably qualifies me for this position.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

There are none.

4. List and describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or for the purpose of affecting the administration and execution of national law or public policy.

I have not engaged in any lobbying activities.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Does not apply.

6. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them.

I will comply with the Department's regulations concerning conflict of interest and will seek and abide by the advice of the Assistant General Counsel for Standards of Conduct.

Department of Energy
Washington, D.C. 20585

NOV 22 1982

Memorandum for Martha O. Hesse
Assistant Secretary for
Management and Administration

From: Ralph D. Goldenberg
Assistant General Counsel
for Standards of Conduct

Ralph D. Goldenberg

Subject: Statement of Agency Ethics Official for Senate Committee

This memorandum is intended to serve as a statement from the designated agency ethics official of this Department, as required by question 6 (page 5) of the Statement for Completion by Presidential Nominees that you are submitting to the United States Senate Committee on Energy and Natural Resources in connection with your nomination for the position of Assistant Secretary for Management and Administration, Department of Energy. I have reviewed your Standard Form 278 (Financial Disclosure Report) dated October 25, 1982, and your Form DOE-460 (Report on Prior Employment) dated November 19, 1982, and have certified that the information contained therein discloses no conflict of interest under applicable laws and regulations.

As a supervisory employee of the Department, you are prohibited by section 602(a) of the DOE Organization Act (Pub. L. 95-91) from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any energy concern. The term "energy concern" is defined in section 601(b) of the Act as any entity "significantly engaged in the business" of any of a variety of activities related to energy production, distribution, sale, or research and development, or any entity significantly engaged in such research and development pursuant to a DOE-funded program irrespective of whether it otherwise engages in such business. The term also includes any entity holding an interest in property from which an energy resource is commercially produced or obtained.

You listed in Schedule A of your Standard Form 278 interests in Occidental Petroleum Corp. and New Zealand Petroleum Co. I understand that your stock holdings in these energy concerns were sold on November 12, 1982, and November 15, 1982, respectively.

Further, section 208, title 18, United States Code, prohibits you from participating personally and substantially, as a Government employee, in any particular matter in which, to your knowledge, you have, or your spouse, minor child, partner, organization in which you are serving as officer, director, trustee, partner, or employee, or any person or organization with whom you are negotiating or have any arrangement concerning prospective employment has, a financial interest. Accordingly, you should avoid participation in any particular matter the outcome of which could have a direct and predictable effect on any such financial interests.

With regard to the discretionary account listed in Schedules A and B of your Standard Form 278, I understand that you have instructed Bear, Stearns & Co., and Bear, Stearns & Co. has agreed, to trade only interest rate futures (United States obligations) for your account, and that my office and the Office of Government Ethics will be promptly notified of any change in this agreement.

Finally, section 606 of the DOE Organization Act prohibits a supervisory employee from knowingly participating in certain matters involving former energy concern employers during the employee's first year of service in the Department. I have reviewed the circumstances of your prior employment with SEI Information Technology, a company that provides consulting services with regard to data processing. SEI is not (and was not) an energy concern. Moreover, I understand that you were not directly involved in the provision of services to any energy concern clients of SEI. Therefore I have concluded that your prior employment with SEI does not give rise to any conflict of interest issues under section 606.

Please let me know if I can be of further assistance.

Financial statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None.

3. Are any assets pledged? (Add schedule.)

Auto loan and margin account, both less than $10,000.

4. Are you currently a party to any legal action?

No.

5. Have you ever declared bankruptcy?

No.

6. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain.

Yes.

7. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

My personal tax return for 1978 was examined as part of a routine audit of a closely held corporation of which I was an officer and major stockholder. The return was found to be in order.

United States of America
Office of
Government Ethics

Office of Personnel Management
Washington, D.C. 20415

Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Martha O. Hesse, who has been nominated by President Reagan for the position of Assistant Secretary for Management and Administration, Department of Energy.

We have reviewed the report and have also obtained advice from the Department of Energy concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. As indicated on the form, Ms. Hesse has disposed of her interests in Occidental Petroleum Corporation and New Zealand Petroleum Company, which were determined to be energy concerns within the meaning of Sections 601 and 602(a) of the Department of Energy Organization Act (Pub. L. 95-91). With respect to the discretionary account listed in Schedules A and B of her report, Ms. Hesse has instructed Bear, Stearns & Co., and Bear, Stearns & Co. has agreed, to trade only interest rate futures (United States obligations) for her account.

Based on the above, we believe that Ms. Hesse is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David R Scott

David R. Scott
Acting Director

Enclosure

FINANCIAL DISCLOSURE REPORT

Addendum 1/1/82 - 10/31/82

Page 1

Reporting Status (Check Appropriate Box)	☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Report	NOTE All schedules must be filed. Enter "None" in areas or across schedules where appropriate	
Agency Use Only Date of Filing (Month, Day, Year)	NOV 16 1982	OGE Use Only	NOV 22 1982

Reporting Individual's Name	Last Name HESSE	First Name and Middle Initial MARTHA O.
Position for Which Filing	Title of Position Assistant Secretary for Management and Administration ~~[illegible]~~	Department or Agency (If Applicable) of Energy
Location of Present Office	Address (Number, Street, City, State and Zip Code) Old Executive Office Building Washington, D.C. 20503	
Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)	11/15/82	Termination Date (If Applicable) (Month, Day, Year)
Room Number	348	Telephone No. (Include Area Code) 202/456-2337
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination Energy and Natural Resources	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held 2/81-9/81 Associate Deputy Secretary, Department of Commerce 9/81-Present Executive Director, President's Task Force on Management Reform	
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual M O Hesse	Date (Month, Day, Year)
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official Roger S. Golemberg 11/19/82	Date (Month, Day, Year) 10/25/82
Office of Government Ethics Use Only	Signature [illegible]	Date (Month, Day, Year) 11/24/82

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

This report updates Ms. Hesse's annual report (attached copy). Information on prior positions in the private sector is reflected in her entry report filed in 1981. D. E. Wilson, [illegible]

See my notes on page 2 and on attached 8/4/82 letter from Bear, Stearns + Co.
RSG

(Check box if comments are continued on the reverse side) ☐

SF 278 Financial Disclosure Report
(Rev. 6-81)

INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

Addendum 1/1/82 - 10/31/82

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?	☐	☒
If "yes", have you reported the income from the trust?	☐	☐
If "yes", have you reported the assets of the trust?	☐	☐
If "yes", is this trust an "excepted" trust? Yes ☐ No ☐ or "qualified" trust?	☐	☐

	Yes	No
Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported?	☐	☐
If "Yes," do you certify to all of the following? 1 They represent solely your spouse's or dependent child's financial interest or responsibility, 2 They are not, in any way, past or present, derived from your income, assets, or activities, 3 You neither derive, nor expect to derive, any financial or economic benefit from them, and 4 You do not have knowledge as to the composition of such interest or liabilities N/A	☐	☐

Page Number ▶ 2

Schedule A

Reporting Individual's Name
Martha O. Hesse

Agency Use Only
Date of [illegible] NOV 15 1982

		Income																	Interests in Property						
		Type of Income (✓)							Category of Amount or Value (✓)										Valuation of Assets (✓)						
[illegible] Child (DC)	Identification	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	Cash								X										H		X				
	Art & Antiques								X										[illegible] & B					X	
	Jewelry (Precious Stones)								X										B				X		
	Pubble Hill Investors, Ltd.								X										F					X	
	Manifund L.P.	X								X									F		X				
	Occidental Petroleum add. 11/15/82	X											X						H					X	
	New Zealand Petroleum add. 11/15/82								X										H		X				
	Bear, Stearns & Company Discretionary Account (see attached letter of explanation)				X									X					H				X		
	Pendick Press	X								X									H			X			
	Delaware Cash Reserves			X								X							H		X				
	Dreyfus Liquid Assets			X									X						H					X	
	Treasury Bills			X									X						H					X	

SF 278 Financial Disclosure Report
(Rev. 6/81)

Addendum 1/1/82 - 10/31/82

Page Number ▶	3	Schedule B
Reporting Individual's Name Martha O. Hesse		
Agency Use Only		
Date of Receipt NOV 16 1982		

PURCHASES, SALES, AND EXCHANGES

This schedule is applicable only in the case of annual and termination reports.

Report Applicable Transactions, Even if Also Reported on Schedule A

S or DC	Identification of Property (real and personal)	Type of Transaction			Date (Month, Day, Year)		Category of Amount or Value (✓)					
		Purchase	Sale	Exchange	Purchase	Sale or Exchange	$1,001 to $5,000	$5,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
	Bear , Stearns & Company Discretionary Account	X	X		Ongoing	Ongoing				X		
	Pandick Press	X			10-17-82				X			

SF 278 Financial Disclosure Report
(Rev. 8/81)

GIFTS AND REIMBURSEMENTS

This schedule is applicable only in the case of annual and termination reports.

Addendum 1/1/82 - 10/31/82

Page Number	4	Schedule C
Reporting Individual's Name Martha O. Hesse		
Agency Use Only		
Date of NOV 16 1982		

I. Lodging, Transportation, Food and Entertainment—List each source totaling $250 or more in value

	Source (Name and Address)	Brief Description	Value
	None		

II. All Other Gifts—List each source totaling $100 or more in value

	Source (Name and Address)	Brief Description	Value
	None		

III. Reimbursements—List each source totaling $250 or more in value

	Source (Name and Address)	Brief Description	Value
	None		

SF 278 Financial Disclosure Report
(Rev. [illegible])

Addendum 1/1/82 - 10/31/82

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name: Martha O. Hesse

Agency Use Only
Date NOV 16 1982

Page Number ➤ 5

Schedule D

LIABILITIES

S, DC	Name and Address of Creditor	Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term	Category of Amount or Value (✓) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
	None						

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
~~None~~				
SEI Information Technology, Chicago, Ill.	Data Processing Consulting	Director and Chief Operating Officer	1969	2/80
				11/19/82

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE This section is applicable only in the case of nominees and new entrants.

Source (Name and Address)	Brief Description of Duties
~~None~~	
SEI Information Technology, Chicago, Ill.	Director and Chief Operating Officer
	11/19/82

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date (Mo., Day, Yr.)
None		

Robert A. Browne

Bear Stearns & Co
3340 Peachtree Road NE
Tower Place Suite 650
Atlanta, Georgia 30326
(404) 262-3070

August 4, 1982

Martha O. Hesse
700 New Hampshire Avenue NW
Washington, DC 20037

Dear Martha:

This is to confirm that your account at Bear Stearns, in the area of investing in commodities has since its inception been traded on a discretionary basis by either Mr. Floyd Berger or myself. At no time have we received any instructions from you other than to utilize our best efforts on your behalf.

The discipline which we have utilized is being followed by Mr. Berger or myself on behalf of a significant number of clients and in general all participate commonly in following the discipline.

I have also included for your benefit, copies of the executed discretionary agreements giving Mr. Berger and myself the above mentioned authority.

Best regards,

Robert A. Browne
Limited Partner

RAB/jb

Enclosures

Ms. Hesse has instructed Bear, Stearns + Co., and Bear, Stearns + Co. has agreed, to trade only interest rate futures (United States obligations) for her account. DOE/OGE will be notified of any change in this agreement. 11/19/82

TRADING AUTHORIZATION " LIMITED " TO PURCHASES AND SALES OF SECURITIES, COMMODITIES AND OPTIONS

Messers. Bear, Stearns & Co.
55 Water Street
New York City, New York 10041

Account No. 050-42114-1-8-713

Investment Objective: Growth

Gentlemen:

The undersigned hereby authorizes Robert A. Browne whose signature is ____________ as his agent
(Signature of Agent and Attorney-in-Fact)
and attorney-in-fact to buy sell (including short sales) and trade in stocks, bonds, options (including uncovered option writing), and any other securities and/or contracts relating to the same on margin or otherwise in accordance with your terms and conditions for the undersigned's account and risk and in the undersigned's name, or number on your books. The undersigned hereby agrees to indemnify and hold you harmless from and to pay you promptly on demand any and all losses arising therefrom or debit balance due thereon.

In all such purchases, sales or trades you are authorized to follow the instructions of Mr Browne in every respect concerning the undersigned's account with you; and he is authorized to act for the undersigned and in the undersigned's behalf in the same manner and with the same force and effect as the undersigned might or could do with respect to such purchases, sales or trades.

The undersigned hereby ratifies and confirms any and all transactions with you heretofore or hereafter made by the aforesaid agent or for the undersigned's account.

This authorization and indemnity is in addition to (and in no way limits or restricts) any rights which you may have under any other agreement or agreements between the undersigned and your firm.

This authorization and indemnity is also a continuing one and shall remain in full force and effect until revoked by the undersigned by a written notice addressed to you and delivered to your office at 55 Water Street New York City, New York, and shall enure to the benefit of your present firm and of any successor firm or firms irrespective of any change or changes at any time in the personnel thereof for any cause whatsoever, and of the assigns of your present firm or any successor firm.

The undersigned is aware that Mr Browne is either a partner or employee of your firm, and understands and agrees, that in acting or purporting to act under this authorization, he will act solely as my agent and not as the agent of your firm.

Very truly yours,

X ____________

Dated-New York City, New York

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107 C (2/70)

TRADING AUTHORIZATION " LIMITED " TO PURCHASES AND SALES OF SECURITIES, COMMODITIES AND OPTIONS

Messers. Bear, Stearns & Co.
55 Water Street
New York City, New York 10041

Account No. 050-42114-8-3-713
Investment Objective: speculative

Gentlemen:

The undersigned hereby authorizes Mr. Berger whose signature is Floyd K. Berger as his agent
(Signature of Agent and Attorney-In-Fact)
and attorney-in-fact to buy sell (including short sales) and trade in stocks, bonds, options (including uncovered option writing), and any other securities and/or contracts relating to the same on margin or otherwise in accordance with your terms and conditions for the undersigned's account and risk and in the undersigned's name, or number on your books. The undersigned hereby agrees to indemnify and hold you harmless from and to pay you promptly on demand any and all losses arising therefrom or debit balance due thereon.

In all such purchases, sales or trades you are authorized to follow the instructions of Mr Berger in every respect concerning the undersigned's account with you; and he is authorized to act for the undersigned and in the undersigned's behalf in the same manner and with the same force and effect as the undersigned might or could do with respect to such purchases, sales or trades.

The undersigned hereby ratifies and confirms any and all transactions with you heretofore or hereafter made by the aforesaid agent or for the undersigned's account.

This authorization and indemnity is in addition to (and in no way limits or restricts) any rights which you may have under any other agreement or agreements between the undersigned and your firm.

This authorization and indemnity is also a continuing one and shall remain in full force and effect until revoked by the undersigned by a written notice addressed to you and delivered to your office at 55 Water Street New York City, New York, and shall enure to the benefit of your present firm and of any successor firm or firms irrespective of any change or changes at any time in the personnel thereof for any cause whatsoever, and of the assigns of your present firm or any successor firm.

The undersigned is aware that Mr Berger is either a partner or employee of your firm, and understands and agrees, that in acting or purporting to act under this authorization, he will act solely as my agent and not as the agent of your firm.

Very truly yours,

X

Dated-New York City, New York

____

1981 Page

FINANCIAL DISCLOSURE REPORT

Reporting Status (Check Appropriate Box)			**NOTE** All schedules must be filed. Enter "None" in areas or across schedules where appropriate.	Agency Use Only Date of Filing (Month, Day, Year) NOV 16 1982 *DOC*
X [illegible]	☐ New Entrant, Nominee, or Candidate	☐ Termination Report		OGE Use Only

Reporting Individual's Name	Last Name HESSE	First Name and Middle Initial MARTHA O.		
Position for Which Filing	Title of Position Associate Deputy Secretary	Department or Agency (If Applicable) Commerce Department	Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.) February 6, 1981	Termination Date (If Applicable) (Month, Day, Year)
Location of Present Office	Address (Number, Street, City, State and Zip Code) 14th & Pennsylvania Avenue, N.W. - Washington, DC 20230		Room Number 5836	Telephone No. (Include Area Code) 377-2916

Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☐ No
Positions Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held	
Certification [illegible]	Signature of Reporting Individual	Date (Month, Day, Year) 6/28/82
Agency Ethics Official's Opinion [illegible] conflict of interest [illegible] laws and regula- [illegible]	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)
Office of Government Ethics Use Only ➤	Signature	Date (Month, Day, Year)

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

	Yes	No
[illegible] your spouse, or dependent child receive income from, or have a [illegible] interest in a trust?		X
If yes, have you reported the income from the trust?		
If yes, have you reported the assets of the trust?		
If yes, is this trust an "excepted" trust? Yes ☐ No ☐ or "qualified" trust?		

If there are any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported but which would be reportable, but for the following:

1. They represent solely your spouse's or dependent child's financial interest or responsibility;
2. They are not, in any way past or present, derived from your income, assets, or activities;
3. You neither derive, nor expect to derive, any financial or economic benefit from them; and
4. You do not have knowledge as to the composition of such interests or liabilities.

Do you certify to all of the above? NA Yes ☐ No ☐

Page Number 2

Schedule A

Reporting Individual's Name MARTHA O. HESSE

Agency Use Only

Date of Filing (Month, Day, Year) NOV 16 1982 (due)

		Income																	Interests in Property						
		Type of Income (✓)							Category of Amount or Value (✓)										Valuation of Assets (✓)						
[illegible]	Identification	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if "Honoraria"	Valuation Method	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	Cash & Commercial Paper			x											x				H						x
	Pebble Hill Investors, Ltd.								x										F					x	
	Jewelry (Precious Stones)								x										B				x		
	Occidental Petroleum	x									x								H					x	
	Combustion Engineering	x								x									H		x				
	Union Oil of California	x								x									H		x				
	Zapata	x							x										H		x				
	Gillette	x								x									H		x				
	Inexco	x							x										H		x				
	New Zealand Petroleum								x										H		x				
	Equifund L.P.			x						x									F		x				
	Associated Communications								x										F			x			
	TANDY 11/19/82				X						X								H			X			

PURCHASES, SALES, AND EXCHANGES

This schedule is applicable only in the case of annual and termination reports.

Page Number	3
Schedule	B
Reporting Individual's Name	MARTHA O. HESSE
Agency Use Only	
Date of Filing (Month, Day, Year)	NOV 16 1982 (DE)

Report Applicable Transactions, Even if Also Reported on Schedule A

Identification of Property (real and personal)	Type of Transaction: Purchase	Sale	Exchange	Date (Month, Day, Year): Purchase	Sale or Exchange	Category of Amount or Value: $1,001 to $5,000	$5,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
Combustion Engineering		x		3/26/81	9/27/81		x				
Union Oil of California		x		3/26/81	11/20/81		x				
Zapata		x		3/26/81	10/13/81		x				
Gillette		x		3/26/81	8/27/81		x				
Inexco		x		3/26/81	11/20/81		x				
Tandy	x	x		9/21/81	10/9/81			x			
Associated Communications		x		6/10/81	11/20/81			x			
New Zealand Petroleum		x		6/22/81	11/20/81	x					
Various Commodities Transactions	x	x		ongoing					x		
Equifund	x			10/81			x				
Occidental Petroleum	x			10/81						x	

Page Number 2	4	Schedule C
Reporting Individual's Name Martha O. Hesse		
Agency Use Only		
[illegible] NOV 16 1982 (DOE)		

GIFTS AND REIMBURSEMENTS

This schedule is applicable only in the case of annual and termination reports.

I. Gifts of Transportation, Lodging, Food and Entertainment—List each source totaling $[illegible]50 or more in value.

Source (Name and Address)	Brief Description	Value
NONE		

II. Other Gifts—List each source totaling $100 or more in value.

Source (Name and Address)	Brief Description	Value
NONE		

III. Reimbursements—List each source totaling $250 or more in value.

Source (Name and Address)	Brief Description	Value
NONE		

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name: MARTHA O. HESSE

Agency Use Only: NOV 1 6 1982 (DOE)

Page Number: 5

Schedule D

LIABILITIES

Name and Address of Creditor	Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term	Category of Amount or Value: Under $1,000	$1,001 to $5,000	$5,001 to $15,000	$15,001 to $50,000	Over $50,000
NONE						

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
NONE				

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

Source (Name and Address)	Brief Description of Duties
NONE	

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date (Mo., Day, Yr.)
NONE		

Executive Level Position Statement

Position Title: Assistant Secretary for Management
and Administration

Grade: EL-IV - Presidential Appointee

The Assistant Secretary for Management and Administration (MA) coordinates the key management activities of the Department with each other and with the other programs and support activities of the Department. The MA concentrates on matters dealing with resource planning and management, internal management systems and policies and program and project management support and control.

Formulates departmentwide policy, directs and manages a broad range of institutional administrative and support functions.

Provides administrative support services to the Secretary, Deputy Secretary, Under Secretary and staff members of the Office of the Secretary.

Manages and controls the Department's financial resources, including budget formulation and execution, accounting practices and procedures, project management systems and management information systems.

Establishes policies and procedures for administration of the construction program and provides central functional direction over construction program and project planning and execution.

Manages and directs the procurement, contract and assistance management program and related business activities of the Department. Establishes Departmental policies, regulations, standards and procedures related to procurement and assistance management.

Formulates, establishes policy and manages all equal opportunity programs of the Department.

Provides policy and management for the acquisition and utilization of human resources, electronic data processing equipment, real property and facilities.

Provides organization and management analysis, as well as advisory committee management.

DISTRICT OF
COLUMBIA) ss

AFFIDAVIT

M. O. Hesse, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

M O Hesse

Subscribe and sworn before me this 16th day of November, 19 82

Cheryl D. Arrington
Notary Public

My Commission Expires
November 14, 1984

U.S. GOVERNMENT PRINTING OFFICE

APPENDIX II

Responses of Mr. Hodel to Additional Questions

THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

December 6, 1982

The Honorable James A. McClure
Chairman
Senate Committee on Energy and Natural Resources
3121 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

During the December 1, 1982 hearing of the Committee upon my nomination by the President to be Secretary of Energy, certain questions were asked of me by Senators Bumpers, Domenici, Matsunaga and Melcher which required my further response. Enclosed are inserts for the transcript of the hearing in regard to such questions.

Following completion of the hearing, I have received a large volume of written questions from several Committee members, as well as from three other Senators. I am pleased to enclose responses for the record to the questions received from Senators Baucus, Bumpers, Domenici, Jackson, Matsunaga, Mathias, Proxmire, Tsongas and Weicker. Additional copies of these materials are enclosed for your distribution to the entire Committee membership and to the non-Committee Senators.

A good many of the questions called not only for my personal views on various issues, but, also, for detailed factual information and/or analysis concerning national energy data, Department of Energy programs and activities, and other matters as to which it has not been possible for me to develop personal knowledge in the four brief weeks I have been serving as Secretary. Particularly in view of the short period available for my responses for the record, it has been necessary for me, insofar as those types of questions are concerned, to seek information and analysis from Department of Energy personnel.

Such information and analysis as has been furnished me by the Department has been incorporated into the responses for the record upon the representations to me that such materials constitute a fair and appropriate response to the question or portions of a question to which such materials pertain. No such factual or analytical material presently is believed by me to be inappropriate for inclusion in the responses for the record, but the Committee must understand I am not representing that such material reflects my personal knowledge.

I believe the responses for the record fairly reflect my personal views on the numerous subjects where I have formulated my own opinion. As I have the opportunity to become more thoroughly familiar with factual and analytical detail pertinent to the Department and national energy issues, I shall look forward to sharing my views with the Committee from time to time.

Meanwhile, I should like to express to you and to the Committee my appreciation for the courtesies you have extended to me both during my informal visits with the Committee members and during the confirmation proceedings. Please cause this letter to accompany the responses for the record which you will be distributing.

Sincerely yours,

Donald Paul Hodel

DONALD PAUL HODEL

Enclosures: Inserts for transcript
Responses for the record

By Messenger

RESPONSES FOR THE RECORD
TO QUESTIONS FROM SENATORS

- Baucus
- Bumpers
- Jackson
- Mathias
- Matsunaga
- Proxmire
- Tsongas
- Weicker

RESPONSE TO QUESTIONS FROM SENATOR MAX BAUCUS

1. What was your role in the five WPPSS nuclear plants? Did you promote their construction? Did you urge utilities and cooperatives to participate in them? Did you issue notices of insufficiency that may have encouraged participation in the plants? Please provide appropriate documentation for your answers.

Answer: In addressing my role in the five Washington Public Power Supply System (WPPSS) nuclear plants, we first must distinguish between the projects themselves. The WPPSS Projects Nos. 1, 2 and 3 were intended to be directly related to the Bonneville Power Administration (BPA) in both financial and power supply relationships in accordance with the Congressional mandates included in the 1970 and 1971 Public Works Appropriation Acts. In essence, BPA was not intended to have a direct relationship with WPPSS Projects Nos. 4 and 5 other than providing some transmissions system and reserve support services. My answers, therefore, are divided into the two categories Projects Nos. WPPSS 1, 2 and 3 and separately Projects Nos. WPPSS 4 and 5.

WPPSS Projects Nos. 1, 2, and 3

In November 1966 (three years before I became Deputy Administrator at BPA), 108 public and private electric utilities in the Pacific Northwest and BPA formed the Joint Power Planning Council (JPPC) to develop a program to meet the region's estimated power needs over the next 20 years. After two years of consultation, in October 1968 the JPPC announced the Hydro-Thermal Power Program-Phase 1 (HTPP-1), which, among other things, provided for the construction of one nuclear plant essentially by investor-owned utilities (shared 70 percent investor-owned and 30 percent publicly-owned utilities) and of three nuclear power plants by the Washington Public Power Supply System (one plant shared 70 percent public and 30 percent investor-owned, two plants 100 percent public). The WPPSS is a corporate consortium of 23 State of Washington municipal and public utility district systems formed under Washington state law. The capability of the portions of these plants owned by municipalities, public utility districts and rural electrical cooperatives (called "preference customers" of BPA) was to be integrated into BPA's power distribution system through net billing agreements with those utilities, which Congress approved in appropriations acts in 1969 and 1970 for the fiscal years 1970 and 1971, respectively.

I became Deputy Administrator of BPA in October 1969, a year after HTTP-1 was announced and 23 days before the then-Secretary of the Interior announced Administration approval of the program. I became Administrator in December 1972, about three years after Congress approved BPA's involvement in this effort. Two of the three-party net billing agreements between BPA, WPPSS, and the participating public utility members (participants) in regard to WPPSS Projects Nos. 1, 2 and 3 were signed during my tenure as Administrator. Under the net billing and companion agreements, WPPSS had the contractual responsibility to design, construct, operate, and maintain these plants. The concept was that funding for these three plants was to be provided by WPPSS' issuing and selling its bonds in the municipal bond market. The actual debt service payment was to be the responsibility of BPA acting through what was called "the net billing process." Fundamentally, the participating utilities acquired shares of these projects and assigned their rights to BPA. They were obligated to pay WPPSS for their respective shares. In exchange, the participants received credits against their purchases from BPA of electric power and services marketed by BPA -- their WPPSS payment was "netted" against their BPA bill.

The notice of insufficiency had no bearing on the initiation of these projects since it followed Congressional action on these projects by more than five years.

WPPSS Project Nos. 4 and 5

BPA does not have any direct contractual relationships with Projects Nos. 4 and 5 nor any responsibility for their operation and oversight; however, those two projects were a part of a regional program to meet the collective needs of the utilities in the Pacific Northwest region. This program was a follow-on program to the Hydro-Thermal power program described above. It came to be known as Phase 2 of the Hydro-Thermal power program. Phase 1, which included Projects Nos. 1, 2 and 3, became not feasible to continue as a practical matter following an IRS ruling on the tax exempt status of such financial arrangements in 1972. At that time, efforts began to go forward toward the development of Phase 2.

The region's electric utilities, both public and private, the BPA, members of the Pacific Northwest Congressional delegation, and other elected officials and leaders in the region concurred that additional generation development was necessary to meet the expected electrical energy needs of the 1980's and beyond. Discussions began in 1972 to determine what was an appropriate follow-on program to Phase 1, utilizing the efficiencies inherent in developing base load thermal generation and integrating that with the Federal Columbia River Power System. By letter dated March 12, 1973, the Secretary of Interior wrote to me with instructions to work toward the development of such a follow-on program or issue a legal notice of insufficiency in order to protect the federal government's interests. Because of the lead times which BPA's preference customers would need to seek and to arrange for non-federal resources if the notice of insufficiency eventually had to be issued, the Secretary's letter was generally communicated to BPA's utility customers. By late 1973, a general agreement outlining

Phase 2 principles was completed and work began developing the contractual relationships among utilities and the sizing and siting of generating resources.

The notice of insufficiency was a legal term provided for in the power sales contracts that BPA had with its preference customers. Essentially, it provided that, upon an 8-year notice, BPA could limit its legal obligation to meet the load growth requirements of its preference customers. (In 1973, BPA had notified its investor-owned utility customers that it would not renew their expiring power supply contracts.) Work on the necessary Phase 2 principles had to lead to project agreements in order to assure BPA that a combination of generation developed by its customers plus the power marketed by BPA would be adequate to meet preference customer needs and would protect the federal government's obligations and interests. It was apparent that this work would take such time that a notice of insufficiency nevertheless might have to be given. Therefore, late in 1974 and early in 1975, contracts with all of BPA's preference customers were amended by mutual agreement to allow a delay of one year in the notice of insufficiency, i.e., shortening the notice period from eight years to seven. This also increased the risk that if the program did not go together there might not be enough time to develop an alternative.

In 1975, as a result of court action under the National Environmental Policy Act, BPA was enjoined from moving forward on agreements among its customers which, the courts held, would have enabled Phase 2. The courts basically directed BPA to develop an Environmental Impact Statement on its role in power planning and development in the Pacific Northwest region including, specifically, Phase 2 of the Hydro-Thermal Power Program (Role EIS).

As a result of these court actions, coupled with the sharply increasing costs of new resource development being experienced within the Pacific Northwest as well as throughout the country, the principles supporting Phase 2 were unable to be implemented on a timely basis. Many of the leaders who were involved in the electric utility activities within the region agreed that the Pacific Northwest was facing serious electric energy supply problems. On the basis of an analysis of the data then available to the region and following discussions with its customers, I issued in June 1976 the notice of insufficiency which would limit BPA's obligations to meet load of its preference customers beyond July 1, 1983. While some have suggested that this notice in and of itself encouraged the commitment to Projects Nos. 4 and 5, it must be recognized that it was merely a reflection of the energy deficits then projected and discussed throughout the region as part of the development of Phase 2.

The initiation and progress toward commitments to Projects 4 and 5 proceeded as early as September of 1974, well prior to the June 1976 notice of insufficiency. In October 1974, WPPSS had announced a $2.1 billion financing program for Projects Nos. 4 and 5. Throughout 1975 and into early 1976, negotiations between preference customers and WPPSS were underway on Projects Nos. 4 and 5. Since, by July 1976, all Project Nos. 4 and 5 agreements in fact had been signed by the 88 participants, it would appear they must have been completely negotiated and submitted for signature well prior to that date and well prior to issuing the notice of insufficiency.

Throughout the development of Phase 2, I did actively participate in the development of a cooperative, unified approach to the development of energy supply which could lead to an adequate, reliable and low-cost supply of power for the Pacific Northwest region. As a part of that effort, Projects Nos. 4 and 5 were identified by the utilities and WPPSS and, as such, were supported by me.

For example, based on the best information then available to me, in November 1974 I informed BPA's preference customers of my judgment that these two plants were necessary to meet the utilities' projected load growth in the mid-1980's, that major financing for the plants would be required in 1975 if the construction schedules were to be met, and that, therefore, execution of the participant's contracts for the facilities was necessary at the time if the construction were to be completed on a schedule sufficient to meet then-projected loads after July 1, 1983. At the March 1976 annual meeting of the Bonneville Regional Advisory Council, I publicly stated my view that it would be desirable to continue to try to have WPPSS Projects Nos. 4 and 5 on schedule.

Since the technology and best information at that time suggested the development of large-scale nuclear electric generating facilities, the possibility of establishing twin units with other large nuclear plants was explored and finally adopted by the utilities -- not including BPA since it was not a participant. Project No. 4 is a twin unit (the same design, size and site location) to Unit No. 1 at the Hanford Site in the State of Washington. Project No. 5 similarly was a twin unit with WPPSS Project No. 3 at the Satsop site in Western Washington. It was anticipated that significant cost savings and operational safety and protection could be obtained by this effort. At the request of WPPSS and BPA customers, and following discussion with the Appropriations Committees of Congress in 1973, 1974, and 1975, I approved of this concept and approach insofar as it affected BPA's obligations in Project No. 3. This was believed by the sponsors to be the most efficient and the least costly approach to meeting the power supply "public utility responsibilities" of our customers. I agreed that they should consider it carefully. Also during this period, I, along with virtually all other power system managers within the region, continued to inform people of the serious power supply situation forecast by the PNUCC.

The Role EIS prepared by BPA is an excellent source for background material and discussion of the issues and options surrounding Phase 2 of the HTPP of which Projects Nos. 4 and 5 initially were a part. That document, although published in final form in December of 1980, was first released as a draft by the President's Council on Environmental Quality in July 1977 when I was Administrator. A GAO report entitled "Bonneville Power Administration and Rural Electrification Actions and Activities Affecting Utility Participation in Washington Public Power Supply System Plants 4 and 5," dated July 20, 1982, and a September 8, 1982 letter from present BPA Administrator Johnson to Congressman George Hansen, together with a "Chronology of Events Regarding the Supply System Nuclear Projects" prepared by BPA and referred to in such letter, also constitute comprehensive sources of information. I was interviewed by GAO during preparation of the July 20, 1982 GAO report, and my comments and GAO's evaluation of my role are reflected in that report. Copies of the introductory portions to the final Role EIS (including introduction, table of contents, summary and "overview") and of the other documents I have mentioned are included for the record in the Appendix hereto.

2. Please explain the BPA/WPPSS relationship regarding the WPPSS nuclear plants 1 through 3. Was BPA obligated to pay the full costs of these plants whether they were completed or not?

Answer: The WPPSS Projects Nos. 1, 2 and 3 are contractually related to BPA in both financial and power supply relationships. Through those agreements, BPA is completely obligated to pay the full costs of these plants whether completed or operable or not. This relationship grew out of BPA's participation in the Hydro-Thermal Power Program as discussed in Question 1, above. This relationship had express Executive Branch and Congressional approval. Specifically, BPA explained its proposed participation to the House and Senate Appropriations Committees in 1968, 1969 and 1970. (The first of these preceded my 1969 appointment as Deputy Administrator, and all of them preceded my 1972 appointment as Administrator). In 1969, Congress approved BPA's participation in two of the thermal projects under the program. In 1970, Congress approved BPA's participation in the remaining projects, including WPPSS Projects Nos. 1, 2 and 3. Recently, Congress reaffirmed its approval of the integrated participation of these plants into the BPA system in the Pacific Northwest Electric Power Planning and Conservation Act. (P.L. 96-501). The further details of this relationship are provided in answers to the subparts of this question A. through E.

2A. The bond statement for WPPSS plants 1, 2 and 3 provide as follows: "Bonneville is obligated to pay ... the total annual costs of each net billed project, including the debt service on the net billed bonds, whether or not the net billed project is completed, operable or operating and notwithstanding the suspension, reduction or curtailment of project output." Are you aware of any other arrangement in the U. S. where a federal agency has entered into such a contract?

Answer: I am not aware that there are or are not any other arrangements in the United States where a federal agency has entered into a similar contract. I will request the Department staff to research this question further.

2B. What were the contractual arrangements under which BPA exercised oversight to the net-billed WPPSS plants? Or is it your position that BPA was empowered only to exercise discretionary review of WPPSS?

Answer: The nature and extent of BPA's oversight or review authority in regard to the net-billed plants (WPPSS Projects Nos. 1, 2 and 3) is specifically contained in two agreements. Principally, they are contained in what is called the Project Agreement between BPA and WPPSS. Some additional, although lesser, criteria are provided in the net-billing agreements between BPA, the participants, and WPPSS. Although these agreements vary slightly between Projects Nos. 1, 2 and 3, in the essential areas regarding oversight there is not any appreciable distinction. Therefore, I have included for the record as part of the Appendix hereto a Project Agreement and a Net-Billing Agreement for Project No. 3. These contracts provided very carefully defined review authority and limited enforcement rights for BPA to modify or to make adjustments to the operation and activities of these projects.

The contracts basically provided that the duties of WPPSS to design and to construct Projects Nos. 1, 2 and 3 were to be carried out "in accordance with prudent utility practice," a term which, by the contracts, required, among other things, the exercise of reasonable judgment in light of the facts known at the time, taking into account practices engaged in or approved by the electrical utility industry. The contracts established a Participants' Review Board, consisting of nine representatives of the participating utilities (virtually all of BPA's preference customers), which had the responsibilities of reviewing WPPSS' construction and annual budgets, as well as all bids, bid evaluations, and proposed contract awards for amounts exceeding $500,000.

After adoption by the WPPSS Board of Directors, the annual and construction budgets of WPPSS, generally after review by the Participants' Review Board, formally were submitted to the BPA Administrator for approval, rejection, or modification, but solely on the basis of whether the WPPSS proposal was or was not consistent with prudent utility practice. However, the contracts also provided for ultimate review and decision by a "Project Consultant" of any disapprovals by the BPA Administrator of WPPSS proposals. The resolution was to be on the ground of consistency with prudent utility practice.

It should be noted that WPPSS is governed by a Washington State Board of Directors made up of the Public Utility Districts and municipal utilities of the State of Washington. These board members essentially represent the same consumers who, in the final analysis, pay the BPA rates covering the costs of these projects. The WPPSS Board of Directors and the Participants' Review Board ultimately are accountable to several hundred publicly elected utility officials throughout the Pacific Northwest region. In the circumstances, BPA's relationship with WPPSS was not similar to that with a private contractor.

I am informed that in 1980 BPA and WPPSS executed an agreement increasing BPA's oversight role.

2C. What caused the massive WPPSS cost overruns?

Answer: I cannot identify specifically those items which may have resulted in the WPPSS cost overruns. The substantial increases in the projected completion costs of Projects Nos. 1, 2 and 3 are generally attributable to various factors including, primarily, slippages in the construction schedules. Every construction delay -- whether attributable to lack of adequate foresight concerning the difficulties in constructing such facilities, labor disputes, the need to conform design to newly-acquired knowledge concerning plant safety, regulation changes, and other technological advances or otherwise -- increases cost because of, among other things, the carrying cost of money and the inflationary pressures on costs that were experienced throughout the 1970's and into the 1980's. There have been numerous evaluations of cost overruns, not only at Projects Nos. 1, 2 and 3, but at other projects being developed by utilities throughout the United States. BPA did evaluate the WPPSS cost overruns, and it is my recollection that the cost of the WPPSS Projects Nos. 1, 2 and 3 tracked in general the cost increases that other utilities were experiencing with their nuclear projects. This was particularly true when the costs of the WPPSS projects in this comparison were adjusted for a major labor dispute that occurred at the Hanford site and the higher labor costs in general that were attributable to construction in the Hanford location in the State of Washington. While I was Administrator at BPA, we discussed the possible need for an independent review of the WPPSS management systems in order to evaluate to what extent management in and of itself may have contributed to those cost overruns. Those discussions finally culminated in the Theodore Barry and Associates Study commissioned by BPA shortly after I left.

2D. Do you think that BPA oversight of WPPSS was adequate?

Answer: I believe that the thrust of your concern relates to the problems of WPPSS Projects Nos. 4 and 5. BPA's contract responsibility for oversight of WPPSS relates only to Projects Nos. 1, 2 and 3. Even as to Projects Nos. 1, 2 and 3, it is difficult to assess fully whether BPA oversight was adequate. Certainly, knowing what we know now, there are things we should have done differently -- different contracts, different procedures, and, likely, even different institutional arrangements. Perhaps, even the State of Washington and the preference customer participants should have structured WPPSS differently. However, the question should, in all fairness, be judged by what was known and perceived at the time.

The following remarks relate to Projects Nos. 1, 2 and 3:

The oversight provisions of the contracts were established on the fundamental principle that the Washington State Board of Directors of WPPSS, and the participants and BPA all had the same interest in mind and essentially the same consumers to whom they were responsible. Furthermore, the NPR project at Hanford had just been completed under a similar arrangement and had come in ahead of schedule and below budget. The normal, arms-length oversight relationship that would exist with a private contractor simply was felt by the parties not to be appropriate in this circumstance and, possibly, in the atmosphere at the time might not have been able to be negotiated.

Throughout the progress of construction, the relationship on oversight was continuously reviewed and adjusted. The basic premise of a common motivation with the WPPSS Board and the participants remained. As costs overran estimates and delays were experienced, greater and greater pressure was exerted by BPA. However, in the early years, these explanations regarding these impacts were felt reasonable by the region's utilities, the Board of Directors, the Participants' Review Board, and BPA senior staff.

In retrospect, neither WPPSS, its State Board of Directors, nor the participants during that time were adequately situated to deal with a construction project of such immensity and complexity. In such an atmosphere, BPA, before, during and after my tenure as Administrator, saw its role as one not just of oversight, but one of helping them in their efforts to move these projects forward. It will be remembered that the region, including BPA, believed we were facing serious power supply deficits and needed to act in such a way that we did not add to the delays of these projects.

Subsequently, the GAO, Theodore Barry and Associates, the Washington State legislature and others have looked back and suggested what might have been done. They also will play a part in the judgment about whether BPA oversight of WPPSS was adequate. I am advised that the GAO currently is updating its report which will add to the views on this subject.

2E. During your tenure at BPA did your office have an auditor at the WPPSS facilities? What was his name? Could you submit for the record his reports and your responses to him and to your deputies as to what responses should be made to his reports?

Answer: I am not aware whether or not throughout the period of time when I was in office as Administrator, BPA had an auditor at the WPPSS facilities. BPA did, however, have an engineer or other suitable technical person at each of the project sites able to review the technical construction and design activities. At the BPA Headquarters Office, there were several other engineers and auditors who dealt with the WPPSS construction and budget activities. I have initiated a request to determine the specific nature of the then-existing BPA auditing activity, the names of the person(s) primarily responsible for such activities at the time, and a review of the BPA files for reports and responses.

3. What is your view of prospective solutions to the WPPSS debacle? What is likely to occur in the event of a default? Would you be willing to prepare a departmental overview of WPPSS -- the causes and possible solutions -- for submission to Congress? When could you complete such a project?

Answer: There is no basis for a government bail out of WPPSS at this time. I believe there is the capability within the region to resolve these issues if there is the will to cooperate.

I am not personally or technically aware of all the ramifications that may be associated with a default on the bonds to pay for Projects Nos. 4 and 5. There has been a great deal of discussion and speculation on that issue. A July 2, 1982 GAO report on this subject to Congressman Weaver is believed by me to be the most definitive piece covering the whole spectrum of views currently available. I am including a copy of that July 2, 1982 GAO report for the record as part of the Appendix hereto.

I am willing to undertake any reasonable or appropriate studies which the Committee might request. The date of completion would be an outgrowth of the scope and complexity. In this case, however, I respectfully urge the Committee not to request a study of the type about which this question inquired. A critical situation exists. Litigation is active. All parties have inordinate demands on their time. A review such as the one asked about in the question undoubtedly would divert important management resources at BPA, WPPSS, the Pacific Northwest Regional Power Council and the utilities away from discharging their respective responsibilities to the region in the weeks and months ahead. Moreover, WPPSS is a legal entity organized under special statutes of the State of Washington and, apart from the contractual provisions concerning WPPSS Projects Nos. 1, 2 and 3, is not subject to direct oversight by BPA or DOE. Any Departmental oversight efforts should be conducted carefully to reflect appropriate respect for the legal status of WPPSS.

4. Do you have any observations concerning the polarization that occurred in the region's energy debate -- particularly around the time of your speech to the City Club of Portland in which conservation groups were severely castigated? What did you learn from that experience? How will things be different in your work as Secretary of Energy?

Answer: Rather than encouraging debate, the polarization resulting from what were perceived as personal attacks crippled dialogue on most fronts. I have learned that if we seek a dialogue, as I do, it is essential to try to reduce polarization. A big difference at DOE will be my determination, to the best of my ability, to seek areas of agreement in order to foster the ability to communicate. This effort is already underway with encouraging beginnings.

5. In 1976, BPA received a contracted energy conservation study from Skidmore, Owings and Merrill. The study concluded that conservation could reduce, if not eliminate, the need for new power plants. Were the study findings circulated to customers in order to encourage them to undertake conservation activities? Was it made available in time for review by those considering participation in the WPPSS projects? Since the question has arisen whether BPA tried to withhold the report from public scrutiny, please supply copies of statements and memoranda which deal with public release or discussion of the report. Did you make or authorize an effort to slow release of the report?

Answer: The Skidmore, Owings and Merrill (SOM) Report was a study contracted by BPA in January 1976 for use in preparing BPA's "Role" environmental impact statement. The draft report was completed by SOM in May 1976, and the final report was submitted by SOM to BPA on July 20, 1976. On August 18, 1976, the final SOM report was distributed by BPA to participants in the BPA "Role" EIS process, including the Public Power Council, conservation and other public interest groups, and the Pacific Northwest states. After a thorough review by BPA staff, the final SOM report, together with BPA's analysis, were the subject of a BPA press conference on October 4, 1976.

With respect to the issue of whether the results of the SOM report were available to the utilities participating in WPPSS Projects Nos. 4 and 5 before they signed their participants' contracts, it will be recalled that negotiations on WPPSS Projects Nos. 4 and 5 leading to contract signatures had been going on throughout 1975, with the final agreements all being signed by July 14, 1976, which was prior to SOM's submission to BPA of its final report.

At BPA's instigation, the preliminary conclusions and approach by SOM were discussed even prior to the draft SOM report. Such an advisory meeting of BPA preference and other customers was held on April 19, 1976, under the sponsorship of the Northwest Public Power Association. A substantial number of customers attended, together with SOM representatives, to discuss the report SOM was preparing. On April 27, 1976, a similar meeting was held with the staff of the Northwest Energy Policy Project, an energy policy group commissioned by the Governors of Oregon, Washington, and Idaho.

A member of the SOM group preparing the report publicly discussed the draft conclusions of the report in May 1976, prior even to the time BPA had the opportunity to complete its analysis and review of the draft. There was very substantial media coverage of the findings and recommendations of that draft because of their controversial nature. It is inconceivable to me that the 88 utilities which eventually signed WPPSS Project Nos. 4 and 5 contracts in July 1976 were unaware of the existence of the SOM report and of its views on the subject of conservation as an alternative to construction of new nuclear plants.

At the time of this early release of SOM's views and subsequently, BPA expressed its concern that the draft could be or was misleading in the sense that a substantial portion of the conservation savings identified by SOM might or might not be capable of realization because they depended upon mandatory conservation through laws, the enactment of which could not be assumed. An example of one such conservation option which was a part of SOM's projected savings, as I recall, required homeowners to weatherize their homes before they would be allowed to sell them. BPA and I were concerned that the projected energy savings from that and similar mandatory measures could not be relied upon safely by utilities which had an obligation to make the necessary plans to provide an adequate power supply prior to the time there could be confidence that the required laws would be enacted. In my view, the utilities' awareness of the views of SOM could only have been heightened by the debate surrounding these matters which was carried on at numerous gatherings of utility groups, much less in the media.

I do not recall in any way making or authorizing any effort to slow the release of the final SOM report together with BPA's analysis which, in the circumstances, was believed by BPA to be necessary to minimize the risk that the public otherwise might be misled in drawing conclusions from the report.

The inference that I might suppress a report favorable to conservation as an alternative to development of additional generating capacity runs counter to my long-standing, publicly articulated advocacy of conservation as a necessary resource. My opening statement to the Committee refers to some of my public remarks as far back as two years before the SOM report. Indeed, during the year which preceded execution of the contracts for WPPSS Projects Nos. 4 and 5, I referred in a major speech in Seattle to "the overriding need for energy conservation." In December 1975, I stressed that "energy conservation is an essential first step in solving the energy crisis which confronts both this region and the U. S.;" and, contemporaneously with the draft SOM report, I publicly urged that "conservation is essential, and we strongly emphasize that it must become a way of life." Therefore, in light of material supplied for the record by one of the public witnesses, I have initiated an inquiry to identify what copies of statements and memoranda may be available in response to this question.

RESPONSE TO QUESTIONS FROM SENATOR BUMPERS

1. What role do you envision for nuclear power in the next decade? Nuclear power currently comprises 4.5 percent of all energy produced in the country. Will this percentage increase significantly in the next ten years? If so, how many more plants will need to be built? How many are now operating? How many more are being built? How many are planned? How many plants have been cancelled or suspended in the past three years?

Answer: Nuclear energy has in the past, and will continue, to play an important role in assisting our Nation in meeting its energy needs. Currently, nearly 14 percent of the Nation's total electricity is being generated from the nuclear powerplants now on line. Assuming the plants now in some phase of planning or construction come on line in the early 1990's, it is anticipated that between 20 and 25 percent of our projected electrical needs, totalling about 750 billion kilowatthours, will come from nuclear energy. President Reagan in his Nuclear Policy Statement of October 8, 1981 directed the Secretary of Energy to give priority attention to recommending improvements to the nuclear regulatory and licensing process. I am informed that the Department has done a great deal of creditable work in response to the President's request and, while we have not yet completed a legislative proposal, we hope a draft will be ready in early 1983. Departmental spokesmen have discussed many of the proposed reforms in both speeches and press conferences, and I look forward to reviewing the entire proposal and making the appropriate recommendation to the President and the Congress. If the policy initiatives outlined by the President are not implemented in some appropriate manner, I suspect nuclear energy will not be the factor in our Nation's total energy mix described above. I am advised that:

- There currently are 74 commercially licensed operating nuclear power plants in the United States.
- There are about 64 nuclear plants under construction.

- About five more nuclear plants are being planned.
- In the past three years, 40 nuclear plants have been cancelled.

2. Do you agree with David Freeman's position that the reason so many plants have recently been cancelled is that the design of the U. S. plants is inherently flawed and requires safety modifications that render them uneconomical? What is the average cost of electricity generated by existing nuclear power plants? What would be the cost of electricity generated by a nuclear plant to be built in the future, e.g., if construction began tomorrow?

Answer: According to the Department of Energy's understandings as to the causes of nuclear plant cancellations, the primary reason for the recent cancellations of some nuclear plants is not due to an inherent flaw in the plant design but, rather, due to a decrease in electrical demand coupled with deteriorating financial conditions of the utilities. While safety modifications have contributed to the increased costs of some nuclear plant projects, lower utility bond ratings and difficulty in financing have been a particular problem in continuing these capital intensive projects.

The average cost of electricity generated in 1981 by nuclear plants was 26.2 mills per kilowatthour. Based on a 12-year construction period and a 1995 startup of a nuclear plant, the generation cost is estimated at 47 mills per kilowatthour in 1982 dollars.

3. What is the proper role for the government in encouraging the use of nuclear power? Should it continue to establish safety standards? Should it continue research and development of light water reactor technology? Should it research methods of extending uranium burn-up? How much money should be devoted to this end? Should the government furnish the money for retrofitting existing plants in order to extend uranium burn-up? Should the government provide the facilities for storing nuclear waste? What should the facilities be? How near are

we to identifying the proper medium for storage? Should the users of any government storage facility pay fees sufficient to recover the costs associated with that storage?

Answer: The proper role for the government in encouraging the use of nuclear power is twofold: first, to conduct the research and development in generic long-term, high economic risk, and high payoff areas that are beyond the capability of the private sector to support; and second, to focus on and to correct the institutional problems and government obstacles to enable nuclear power to contribute to our future energy needs.

The government should continue to establish safety standards to assure protection to public health and safety. The role of the federal government with regard to research and development of LWR technology is directed by the Congress in the Nuclear Safety Research and Development Act of 1980. Cooperation among the NRC, EPA, FEMA, DOE and other agencies will be necessary. Research and development on light water reactor technology will continue to be needed, especially the NRC confirmatory research effort. Research on methods of extending uranium burn-up should be continued since there are national benefits such as reduced spent fuel generation and, ultimately, reduced costs to the consumer. Although I did not participate in the preparation of the Department's FY 1983 budget, I am aware that this budget request is now before Congress and it is my hope that the President's recommendation in that regard will be supported by the Congress. I have not made my recommendations on the proper level of future federal expenditures for these activities, but I will be reviewing the FY 1984 budget proposals to establish priorities on this and all Department of Energy programs. The DOE budget will be presented to Congress in the near future.

In regard to the government's providing money to retrofit existing plants, I believe we should continue our cost-sharing arrangements with the utilities and fuel supply industries to fund technology development only. The utility industry purchases replacement fuel for their reactors, and by doing so can implement the extended burn-up improvements.

The President, in his April 28, 1982 letters to the President of the Senate and to the Speaker of the House, commended the bipartisan Congressional activity regarding nuclear waste disposal and urged prompt enactment of legislation that will allow us to move ahead in a timely and responsible manner. I fully endorse the President's statement and am encouraged by the recent progress in this regard, for I believe that high-level nuclear waste disposal is a national problem due to the technical considerations inherent in the site selection, design, construction, and operation of a facility to isolate the radioactive waste for a long period of time. Therefore, the federal government must have the responsibility of facility site selection, development, and operation. The users of government nuclear waste storage and disposal facilities should pay fees which are sufficient to recover the cost of these services. The Department of Energy currently is responsible for the storage and disposal of all radioactive waste generated at its facilities. The Low-Level Radioactive Waste Policy Act (P.L. 96-573) assigns the responsibility for commercial low-level waste to the states.

The Department currently is identifying candidate sites for the disposal of radioactive wastes in geologic media. We plan for our investigations to progress to a detailed site characterization stage in FY 1983, when we will select three sites -- in tuff located in Nevada, basalt located in Washington, and one salt site yet to be determined -- for at-depth geologic testing. The Department will select one of these three sites for a nuclear waste repository by 1987 and will apply to the Nuclear Regulatory Commission for a license by 1988. We plan to have a repository ready to accept waste by about 1998.

4. Projections of the future demand for electricity have, in recent years, been far higher than the actual demand, haven't they? Wasn't this the case with the Washington Public Power Supply Service? What was your role in this matter? Did you consider the alternative of promoting conservation? If not, why not? If so, why was that alternative rejected? In retrospect, how might the WPPSS problem have been avoided? Does this experience show that we have greatly underestimated the value of conservation?

Answer: In recent years, utilities' forecasts indicate diminishing future load growth. Recognizing that these forecasts are projections for several years in the future, if you compare the actual load in each of the recent years with that forecast ten years earlier, it is apparent the forecasts have been significantly higher than the actual demand in those years. This should not be too surprising in view of the increases in energy costs plus the economic situation, both of which were not contemplated in the earlier forecasts. This has also been the case with the projections of power supply requirements in the Pacific Northwest, which impacts directly on the need for the Washington Public Power Supply System projects.

While Administrator at Bonneville, we had a limited responsibility in the area of load forecasting. In general, we forecasted, as a service, the loads for many of the very small public utility and cooperative utility customers. The larger preference customer utilities and all the investor-owned utilities were responsible for forecasting their own loads as a part of their individual utility responsibilities. BPA participated with all of the utility customers in putting together a sum of all of the utility forecasts within the Pacific Northwest region. In the mid to late 70's, this was done under the auspices of the Pacific Northwest Utilities Conference Committee.

I did, in fact, actively promote conservation as evidenced only in part by my early speeches to which I referred in my opening statement to the Committee. I continued that effort while I served as BPA Administrator. I can only speculate as to why conservation was not given greater attention by utility planners. The year 1974 was at the end, in retrospect, of a long period where additional power generation resulted in a net overall decrease in price in real terms. That investing directly in the saving of energy as a resource in the end would result in lower cost power and lower rates to consumers was, as yet, an untested concept. I am pleased to note, however, that through the intervening years the conservation approach has flourished and has become a meaningful part of our Nation's energy management activities.

At the time WPPSS Projects Nos. 1, 2 and 3 were planned and arranged for, there was a very clear indication of need. As yet, I am unaware of any evidence that would question the need for those projects. It is my understanding that recently BPA recommended to WPPSS, and that the WPPSS Board has agreed, that construction of Projects Nos. 2 and 3 even now should proceed at full pace to maintain or to improve existing construction schedules on those projects and that the schedule for construction of Plant No. 1 be extended for up to five years to parallel more closely the expected requirements for power from Project No. 1 based on recent forecasts of demand over the next decade, including BPA's first independent regional demand forecast pursuant to the Pacific Northwest Power, Planning and Conservation Act of 1980. No information has been called to my attention which presently causes me to believe that there was any mistake as to need in undertaking the construction of these three projects.

Projects Nos. 4 and 5 have been terminated. Although the need for this power has been questioned, I must speculate that a basic reason for their termination is their extensive cost overruns and an associated inability to finance the projects economically.

It is difficult to assess realistically whether we have greatly underestimated the value of conservation. Certainly as costs of energy have increased sharply since the late 1970's, there has been a corresponding response in the conservation of energy. It should be noted, however, that had the cost of energy stayed as projected, such as the initial estimates of the WPPSS projects, then the resultant cost of energy would have been significantly lower and the resulting economically motivated conservation also would have been less.

5. Shouldn't the WPPSS experience indicate the need to re-examine the need for building the Clinch River Breeder Reactor? What were the assumptions made concerning the demand for electricity and the supply of uranium when Clinch River was originally authorized? How have those assumptions changed? How would they change if we began a more aggressive conservation program, e.g., like the Canadian program which purchased insulation materials for individual homeowners or the Oregon program which allowed utilities to install weatherizing materials in private buildings and treat those expenditures as capital costs on which they could earn a rate of return? How would projections for the need for uranium change if the government and industry embarked on a program to insure extended uranium burn-up? Wouldn't these alternatives be more cost-effective? Couldn't the money now spent on Clinch River be more effectively used to research and develop a more up-to-date breeder design?

Answer: The primary reason to develop breeder reactor technology is the same today as when the Clinch River Breeder Reactor (CRBR) originally was authorized -- to pursue the research and development necessary to enable eventual utilization of an enormous energy resource. The CRBR will provide important information regarding the safety, environmental, and economic potential of breeder reactors. As such, it represents a prudent step in the development of this technology.

While it is true the demand for electricity currently has slowed from its historical growth rate which, in my view, is one of the principal causes for the recent deferrals of certain WPPSS plants, presently available data indicates the lower growth in demand can be attributed in large part to the slower economic growth the Nation has been experiencing in recent years. I believe, as the President has said, that sustained economic growth over the decades ahead will require additional energy supplies. This is particularly true of electricity, which will supply an increasing share of our energy.

It also is true that more uranium has been discovered since CRBR originally was authorized, but this resource is still limited and will yield a finite amount of energy in today's light water reactors, even with the use of extended uranium burn-up technology we have developed. Using this same uranium in a breeder reactor increases the energy obtainable by 6,000 percent, thereby presenting an essentially inexhaustible source of energy for the United States.

As you know, I firmly believe in conservation and intend to encourage conservation programs, as I have in the past. We have seen homeowners and business firms showing remarkable ingenuity and resourcefulness in reducing their energy needs through conservation. As Secretary of Energy, I intend to emphasize publicly the importance of energy conservation in the Nation's energy equation. I believe the past efforts of our fellow citizens should be recognized, and they should be encouraged to further their efforts in this regard. Although conservation must be regarded as a valuable energy "resource," I nevertheless believe that sustained economic growth over the decades ahead will require additional energy supplies, even with conservation playing its rightful role.

My best information is that the Clinch River Breeder design is up-to-date and represents the most advanced LMFBR design in the world in all aspects except size. Over 1,000 design changes have been made to reflect state-of-the-art technology since the project began.

6. What is the current status of the Clinch River project? How much money has been spent on site preparation? How long will site preparation take? How much money has been spent on developing the components? Have they been tested? Have the generators been tested? What have the results been? Will the generators require further modification? How much will that cost? What was the original low bid for the generator contract? What was the bid which was accepted? How much have the generators cost thus far? Was the original contract cancelled? How much did that cost the government?

Answer: I am advised that:

All elements of the project, except construction, are at an advanced stage of completion. Design is approximately 90 percent complete. Equipment valued at $740 million, representing approximately 73 percent of the total equipment required, is either completed or on order. (Through the end of FY 1982, $435 million have been spent, with deliveries totalling $352 million.) Licensing activities are proceeding ahead of schedule. Site preparation activities began on September 22, 1982. Overall, the accomplishments to date provide a high degree of confidence that Clinch River is in a position to proceed expeditiously toward a 1989 completion.

As of December 1, 1982, approximately $782,000 have been spent on site preparation. Site preparation activities will cost approximately $60 million.

All components will be subjected to tests consistent with the requirements of applicable codes and standards and with the requirements of the Nuclear Regulatory Commission. In addition, detailed performance testing has been completed or is underway on the following components--electro-magnetic pump, in-vessel transfer machine, reactor closure head, steam generator, main coolant pump, main pump drive, secondary control rod system, primary control rod system, plant protection system, ex-vessel transfer machine grapple, ex-vessel storage tank bull gear and drive. The steam generators for the CRBR currently are being tested at the Energy Technology Engineering Center. As of December 2, 1982, the steam generator has been tested to a power level of about 30 MW. The performance has met or exceeded requirements on all measurements to date.

Analysis by the CRBR project in September 1982 of data from a test program on light water reactor steam generators indicated a potential problem with a phemonenon called fluid elastic buffeting. DOE has decided to eliminate the possibility of this potential problem by certain modifications which will increase the cost of the steam generators contract by about $1 million. A full scale test of the modifications will be conducted early next year and will be completed on a schedule consistent with fabrication of the plant units. No further modifications to the steam generators have been identified.

The original cost plus fixed fee contract for the steam generators with Atomics International was terminated on November 20, 1981. The Department has paid Atomics International about $102,614,000 for services on that contract.

On July 2, 1982, DOE placed a fixed price contract with Westinghouse Electric Company to supply 10 plant steam generators for the CRBR. Westinghouse was the lowest of four bidders with a bid of $34 million. To date, about $130 million have been spent to design, develop, procure materials, and fabricate CRBR steam generators.

7. What is the current estimate of the cost of completing the Clinch River project? Does that include the cost of fuel fabrication? What is the cost of fuel fabrication? Will that necessitate the purchase of the Barnwell Facility? During the September debate on Clinch River, the proponents of the project claimed that the sales of electricity would allow recovery of most, all or even more than its costs, but did these estimates include the cost of operating the plant during those years? What was the cost of electricity that those estimates assumed? Are any utilities required to buy the output of the project? Is TVA? What is the average cost of power produced by TVA?

Answer: I am advised that:

The estimated remaining cost to the government of completing the Clinch River project is $2 billion. Utilities and reactor manufacturers will fund an additional approximately $230 million of the remaining cost.

The cost of fuel fabrication, which is included in the total completion cost estimate, is estimated at $245 million for the 5-year developmental operating period. Fuel fabrication cost does not include the cost of plutonium because Clinch River will be a net producer of plutonium and DOE will retain possession of the plutonium. Fuel fabrication cost includes an allowance for future inflation based on an 8 percent annual inflation rate and a $48 million contingency to cover any increases in fuel fabrication costs that ultimately may be experienced.

The purchase of Barnwell is not necessitated by the Clinch River Project, and I am not aware of any consideration being given by DOE to such purchase.

TVA is obligated, under the terms of the four-party contract on the project, to purchase all electricity produced by the Clinch River Breeder Reactor during the 5-year period for a price equal to what TVA otherwise would have paid to produce or acquire this electricity. The average megawatt hour cost of power produced by TVA in FY 1981 was $11.17 for nuclear plants, $20.48 for fossil plants and $130.90 for gas turbine plants for a weighted average cost of $18.85. This is the average cost at the plant boundary and does not include transmission and distribution costs. TVA's cost of producing electricity ranges widely plant to plant depending on the efficiency of the plant, the fuel cost, and when the plant was built. The average cost is not indicative of the price TVA will pay to DOE for electricity from the CRBR since TVA will pay DOE the marginal cost that TVA otherwise would have incurred to produce or acquire the electricity.

The Department's September 1982 net revenue estimate of $8 billion over the life of the plant was calculated after deducting estimated operating and maintenance expenses. The projected revenues are based on a TVA rate of $30.61 per megawatt hour in 1981 dollars and an assumed annual inflation rate of 8 percent. This value is in accordance with the DOE contract with TVA regarding revenue rates.

8. What has been the French experience with breeders? What is the breeding rate? What is the cost of the electricity generated? What are the projections of the cost of electricity to be generated by Super Phoenix? Do the French plan to rely heavily upon breeders to provide their energy? If not, why not? Do they lack confidence in the technology? If so, doesn't that indicate that breeders are not a "long-term, high-risk" technology? Isn't it in the Administration's philosophy that we should only fund long-term, high-risk projects?

Answer: The French experience with breeders has been extensive. They successfully have operated the Rapsodie LMFBR, which is comparable to our EBR-II, for 15 years. They built the Phenix Reactor, comparable to the CRBR, in 5 years and have operated it successfully since 1973. The French 1200 MWe Super Phenix reactor, now under construction, will be operable in 1984.

The breeding ratio of Phenix is approximately 1.13. I am advised that the French believe breeding ratio is not an important consideration in construction and operation of early reactors. As far as DOE is aware, this view is shared by all other countries that have significant breeder programs. Early development is intended primarily to demonstrate successful construction and operating experience. High breeding ratios can be built into future core designs with known technology, when wanted. According to French publications, the cost of electricity generated by the breeder is comparable to the cost of electricity generated by coal-fired plants in France.

As with other nuclear breeder nations, the French schedule for extensive commercial deployment of breeders is not fixed. However, my understanding is that the French plan to rely heavily on nuclear plants to meet future electricity requirements. The French have displayed substantial confidence in their breeder technology based on success to date.

Nevertheless, they realize the breeder cannot reasonably be regarded as a short-term, low-risk program because it will be necessary to demonstrate that the capital cost of a breeder will not be more than about 50 percent greater than that of a comparable LWR plant. For that reason, the breeder should be viewed as a "long-term, high-risk" technology.

9. How much are the French expending in breeder research and development? How much are the Japanese? The Germans? The British? The Russians? Anyone else?

Answer: The expenditures for breeder research and development for other countries are difficult to quantify because of inadequate information, differences in costing procedures, and differences in reactor licensing and regulatory requirements which guide breeder research and development.

The foreign embassies have provided the following estimates which in some cases include reactor plant construction costs:

United Kingdom	
1954 - 1981	approximately $2.7B
Germany	
1956 - 1979	approximately $10.5B
Japan	
1955 - 1980	approximately $6.4B
France	
up to 1980	approximately $4.6B

Russia cost figures are not meaningful and therefore are not reported. But we believe that the Russians are aggressively pursuing their breeder program.

10. Should the WPPSS be bailed out either through a government guarantee of the loans or by letting utility customers deduct from the income taxes the amount of their electric bill due to the nuclear plants which have been cancelled? Or through any other means?

Answer: There is no basis for a government bail out of WPPSS at this time. I believe there is the capability within the region to resolve these issues if there is the will to cooperate.

11. Please comment on the GAO statement that, if the Clinch River project begins operating, its sales of electricity will fall $3 billion short of recovering operating and maintenance costs.

Answer: I am advised that the Department of Energy has not received a report from the GAO that stated the sales of CRBR electricity will fall $3 billion short of recovering the operating and maintenance costs. See answer to Question No. 7 concerning DOE's estimates that revenue from sales of electricity generated by CRBR over the plant life will be considerably greater than the operating and maintenance costs.

12. What role do you envision for solar power in the next decade? What role for other renewables? Will this require any government funding? Has the Department performed any studies to determine whether the projected growth of solar will actually occur?

Answer: I anticipate that the use of solar and renewable technologies should and will continue to grow over the next decade. As I have said before, I believe the Nation's energy policy should be a balanced one and, to that end, the federal government should continue to fund appropriate research in solar and renewable technologies. I am informed by Department personnel that DOE has not conducted any studies to determine whether there will be actual occurrence of the solar growth which had been predicted by earlier forecasts now believed by the Department to have been unrealistically high. However, information presently possessed by the Department indicates that, while the growth of solar has not been as great as that previously forecasted, there nevertheless has been significant increase since the mid-1970's of the number and total square footage of solar collectors marketed.

13. Is there a role for the government in developing solar energy? Should the solar bank be funded? Wouldn't it stimulate both conservation and solar energy? Wouldn't that be cheaper than building Clinch River? Are all the people able to afford to insulate their homes properly? To buy fuel efficient cars?

Answer: The federal government has an important role in encouraging the development of a range of energy technology alternatives, including solar energy. My belief is that this role is most appropriately focused on research and development and on the resolution of technical issues.

The Chairperson of the Board of the Solar Bank is the Secretary of the Department of Housing and Urban Development and, therefore, I hesitate to comment on the issue of Solar Bank funding without being informed of all considerations taken into account by the Chairperson and the other Board members. While funding the Bank presumably would stimulate the use of solar devices, and of certain conservation measures such as insulation, my own feeling is that, particularly in view of the decline in interest rates within the last several months, the arguments for funding the Bank are less compelling now than they formerly may have been. Not all people are able to afford to insulate their homes optimally or to buy the most fuel efficient cars, but the public policy issues raised by those circumstances, in my view, are more appropriately dealt with not as "energy" concerns, as such, but rather as ones to be resolved as part of the determination of the nature and extent of the federal government's proper role in income assistance.

I do not believe the Nation should be forced to choose between the Clinch River Breeder Reactor and investments in solar energy and conservation. A sound energy policy dictates a balanced approach that in light of, among other things, the willingness and ability of the private sector to pursue various energy technologies, would provide appropriate levels of federal funding for both.

14. Should the energy tax credits be continued? What about the tax breaks for oil exploration and development, e.g., the depletion allowance and the expending of intangible drilling costs?

Answer: At the hearing I testified to the fact that tax credits can have a stimulative effect on conservation and can be a positive force in effecting change. However, I have not had the opportunity to analyze the tax issues raised in this question and do not now have a position on the issues you mention. In arriving at a position relative to these tax matters, it may be important to consult with the Secretary of the Treasury after we have the opportunity to analyze the effectiveness of such techniques in comparison to the revenue impacts that such tax initiatives would create.

15. In 1975, you said the environmental movement had fallen into the hands of a "small, arrogant faction which is dedicated to bringing our society to a halt." Do you still think that?

Answer: The speech to which the question refers was made by me at a time when Bonneville Power Administration (BPA) and I, as its Administrator, were experiencing an enormous sense of frustration arising from a series of lawsuits which we felt were aimed not so much at achieving the true intent of the National Environmental Policy Act -- preservation of a clean and wholesome environment -- as at bringing to a halt virtually every effort on the part of BPA and the publicly- and investor-owned electric utilities in the Pacific Northwest to provide energy to the people of the region. At the time, virtually every participant in the regional power systems foresaw the prospect of a severe shortfall in energy resources during the decade ahead, yet litigation brought under NEPA threatened the very existence of Phase 2 of the Hydro-Thermal Power Program, which BPA and its over 100 customers with diverse interests carefully had worked out to the end that people could have jobs and the other social benefits of an adequate energy supply.

In that speech, I urged my audience "to take up this dialogue." To my chagrin, I learned that verbal challenges as I issued that day can be counter-productive. I now realize that, regardless of the amount of frustration one feels when those programs and policies in which he earnestly believes are sidetracked by antagonists who have equally earnestly held convictions, dialogue is better served by lowering the temperature of the rhetoric.

I am acutely aware that, to be successful as Secretary of Energy, I first must succeed in the commitment I made to the Committee in my opening statement -- "to work with you and others toward a broadened energy consensus in the United States." In my first four weeks as Secretary of Energy, I already have begun that effort by, among other things, meeting with a substantial number of leaders of environmental and conservation organizations to engage in an exchange of views concerning a broad range of energy issues. The discussions have been cordial, straightforward, and I believe, beneficial for all concerned. I have asked my staff to try to arrange follow-on meetings in the near future.

In all fairness, I suggest it would be appropriate to note that the persons who bore the brunt of my remarks over seven years ago purposefully were described by me as being a small faction -- in contrast to what I termed "the responsible majority of environmentalists." I am satisfied that, while the present leadership of environmental and conservation organizations may have some policy disagreements with me, we can interact with each other in a manner which, based on mutual respect, will produce the broadened energy consensus I seek.

16. What is the proper role for the government in encouraging energy conservation? What incentives, aside from higher prices, might encourage conservation? How is the country benefitted if any person fails to conserve, e.g., by not weatherizing his home? How is the country benefitted if that person does conserve, e.g., by weatherizing his home?

Answer: Conservation is an important priority I propose to emphasize at the Department of Energy. I indicated in my testimony I would like to work with the Committee in funding the appropriate Departmental role for conservation. It would seem appropriate for the Department to continue its involvement in long-term, high-risk, high-payoff, generic research and development.

There are numerous, potential incentives to encourage conservation. You have mentioned one such incentive in Question 14 -- tax credits. In developing incentives I favor those programs where we can get existing non-federal organizations to help promote the desired objective. For instance, I favor incentive programs by utilities to promote conservation to their customers. In those circumstances many additional salespersons can be added to promote these programs. As much as anything, we need our leaders in government, in the utility sector and in other energy-interest groups to speak out loudly and clearly on this subject so that we as people can come to live by a conservation ethic.

I believe the country is benefitted to the extent conservation programs such as weatherization yield cost-effective results.

17. Do you support the low income weatnerization program? How many barrels of oil could be saved if 200,000 existing homes were weatherized by government grants of $1,000 for each home?

Answer: I believe programs involving social issues such as low-income weatherization are more appropriately administered by HUD and HHS, the agencies responsible for housing and human services, or at the state level. The HUD Community Development Block Grants and Urban Development Action Grants and the HHS Low-Income Home Energy Assistance Program permit weatherization of low-income homes as an eligible activity under the grants. Unless and until legislation is enacted which transfers DOE's low-income weatherization programs to HUD and/or to HHS, I shall continue to cause DOE to administer those programs effectively in accordance with the Congressional mandate.

How many barrels of oil could be saved in the situation you describe is virtually impossible to estimate at this time because there are so many variables.

18. Do you support low income energy assistance? What percentage of his income does the average low income individual devote to energy? How much will natural gas prices increase in the next year? How will those increases change that percentage?

Answer: I believe low income energy assistance is a social welfare program most appropriately handled at the state level and through the HHS Low Income Energy Assistance Program (LIEAP). In addition to assisting the needy with fuel bill payments, the LIEAP program also allows the states to devote 15 percent of the program's funds to weatherization of low income homes.

In the year measured from April 1980 through March 1981, I am informed, a family of four at the poverty level spent approximately 10 percent of its income on home energy use. This does not include energy for transportation which, if included, would bring total energy expenditures to about 15 percent. Although household energy expenditures increase as family income increases, the portion of household income spent on energy decreases as income increases.

For the past several years, natural gas prices have been rising, overall, at about 20 percent per year in the residential market, and they are expected to increase in the coming year at approximately the same rate overall. The prices for gas subject to the Natural Gas Policy Act (NGPA) will vary according to the terms set by the NGPA for the several different types of gas. Thus, individual families will experience different gas price increases, depending on where they live and what is the average cost of gas their suppliers can purchase, and the demand for gas in their areas by other customers who can purchase either gas or another fuel.

Although, by reason of the abovementioned variables, it is not possible to predict with confidence the changes which the natural gas price increases will have on the percentage of family income devoted to home energy use, past experience indicates that fuel expenditures -- on a percentage basis -- probably will rise more for lower income families than for others.

19. Should natural gas be decontrolled immediately? Should the NGPA be changed to eliminate the contracts problem? Would you endorse either Senator Kassebaum's or Senator Eagleton's proposals to freeze gas prices?

Answer: I do not now have the solution to the natural gas dilemma which we face. I testified that the current regulatory system has created severe problems. What we desperately need is to eliminate the morass of regulations which currently prevents natural gas prices from responding to downward market pressures. A price freeze will continue to prolong the inadequate current system.

20. How much will natural gas prices increase this winter? Is the price approaching the price for competing fuels?

Answer: Based on its Quarterly Short-term Outlook, the Energy Information Administration projects average residential natural gas prices to increase by approximately 20 percent from last winter through this winter. Over the last several years, the average residential natural gas price has increased by about 20 percent annually. Weather is a factor which needs to be considered. Ordinarily, in a colder than normal winter, pipeline companies may have to rely on higher cost sources of supply to meet additional demand.

Some distribution companies have claimed that the delivered price of gas to their industrial customers is at, or approaching, the cost of alternative fuels, mostly No. 6 fuel oil. Many distributors have been granted, or are requesting, special pricing provisions by their PUC's to price natural gas for industrial use competitively with the alternative fuels of dual-fired customers. The price of alternative fuels and the delivered price of gas vary regionally. Accordingly, in some regions of the country, gas prices are substantially below alternative fuel prices.

21. Don't most pipelines have "market-out" clauses in their contracts which relieve them of their take-or-pay obligation if they are simply unable to sell the gas? Is it the government's responsibility to relieve businesses from their freely negotiated contracts?

Answer: I am informed that, according to a report published by the EIA, over half of the quantity of Section 107 deregulated gas flowing in 1980 was covered by market out clauses. Section 107 gas is mainly newly discovered deep gas (i.e., from wells below 15,000 feet). Market out clauses were found in 4 percent of the contracts for 1980 deliveries of Section 104 gas (old interstate gas dedicated to interstate commerce on or before November 9, 1978) and in 9 percent of the contracts for 1980 deliveries of new gas other than Section 107 gas.

In general, I feel that the federal government should not relieve businesses from their freely negotiated contracts. However, in the case of natural gas contracts, I am aware of the view that a number of special clauses were entered into as a direct consequence of, and in reliance upon, the regulatory scheme governing the pricing and distribution of natural gas. It has been asserted that these clauses are creating or could create a result clearly adverse to consumers and to the public interest.

22. What authority does the FERC have to address this problem? Does the NGPA confer authority upon the FERC to invalidate take-or-pay contracts in whole or in part?

Answer: I am advised the Federal Energy Regulatory Commission has broad authority in the public interest under Sections 4, 5, 7 and 16 of the Natural Gas Act to regulate terms of contracts involved in sales subject to its jurisdiction, including take-or-pay terms. I also am advised that, while the Natural Gas Policy Act does contain a provision (Section 601) limiting the Commission's jurisdiction in certain respects, the Commission has under review, among many other issues, the issue of whether Section 601 and other NGPA provisions affect its authority over take-or-pay contract clauses.

RESPONSE TO QUESTIONS FROM SENATOR JACKSON

1. You are no doubt aware of this Committee's concern about preparation of contingency plans for another oil supply disruption. It would not be an exaggeration to say that the Congress enacted the Energy Emergency Preparedness Act this summer because they are not convinced that this Administration is prepared for another energy supply disruption. Would you commit yourself to personally reviewing what contingency plans and actions are being taken within the Department and ensuring that we are in fact prepared?

   Answer: Yes, I will.

2. In this regard, the minority staff understands that the Energy Information Administration is, at industry request, no longer collecting data on how much oil inventories U. S. oil companies have on the high seas and their destinations. Isn't this data essential to the government acting prudently in an oil supply disruption?

   Answer: The Energy Information Administration (EIA) currently obtains relevant information on the volume of oil being shipped to the United States through the Crude Watch system. This system collects weekly data from all principal importers on crude oil loadings at the port of export. An earlier monthly form, discontinued last spring, was used for several months to collect quite detailed data on high seas stocks. Upon review, however, EIA determined that the essential information needed during an emergency could be collected more frequently through the present Crude Watch system with less burden on respondents.

3. Secretary Hodel, this Administration has proposed, first, to "dismantle," then to "reorganize," and now to "merge" the Department of Energy. Aren't you going to have a difficult time keeping quality people at the DOE as long as this talk of self-destruction continues? What is it accomplishing?

   Answer: It is my hope that by emphasizing, first, that merger does not threaten the continued functioning of the Department's programs and, second, that even merger cannot take place unless or until Congress acts, the career employees of the Department no longer will have reason to be concerned about adverse impacts upon them -- something I have stressed, I believe with some success, at meetings with DOE employees.

If the Administration can devise a proposal which is acceptable to Congress, it is our hope that both energy programs and commerce and trade programs will be strengthened by a closer relation.

4. The Administration proposed cutting the budget for Federal energy conservation programs by 97 percent while arguing that the private sector would pick up these programs, and do this research, even though the Energy Research Advisory Board on Federal R&D Priorities issued a report that disputed that conclusion. On March 15, 1982, in a hearing before this Committee, Senator Ford asked the Assistant Secretary for Conservation and Renewable Energy, Joseph Tribble, "Mr. Secretary, has the Department conducted any kind of studies or analysis which would justify your position then that the private sector will conduct the research you are cutting?" Mr. Tribble's response was, "No, we haven't conducted any such studies." Mr. Secretary, before this kind of assertion is made again by DOE, can we see some analysis to back it up?

Answer: I believe strongly that the Committee is entitled to receive more than empty assurances, and, after presenting the FY 1984 budget requests, it is my earnest desire to provide the Committee with information which will furnish rational support for the budget requests.

5. In your briefings with your staff at DOE, has there been any indication of how much of our reduced use of energy has been due to the recession and how much is due to improved energy efficiency? What did you learn?

Answer: The current recession, of course, contributes to reduced energy use, but high energy prices, advancing technologies, and a host of other factors are working simultaneously to increase energy efficiency. We do not have complete data for 1982, but, based on summary data from a study of energy trends conducted about six months ago (copy attached at end of this section), some of the staff believe that slower economic growth, starting as far back as 1974, is responsible for about one-third of the currently observed reductions in energy use. Increased efficiency and conservation are believed to be responsible for the rest. I believe that more work needs to be done or longer experience is necessary, or both, before we can have confidence in these conclusions.

6. Among your publications you list a speech you gave at the City Club of Portland on July 11, 1975, in which you stated: "The greatest threat to the environmental movement is the environmental movement itself. Over the past several years, it has fallen into the hands of a small, arrogant faction which is dedicated to bringing our society to a halt. I call this faction the Prophets of Shortage. They are the anti-producers, the anti-achievers. The doctrine they preach is that of scarcity and self-denial." Do you still stand by those words?

Answer: The speech to which the question refers was made by me at a time when Bonneville Power Administration (BPA) and I, as its Administrator, were experiencing an enormous sense of frustration arising from a series of lawsuits which we felt were aimed not so much at achieving the true intent of the National Environmental Policy Act -- preservation of a clean and wholesome environment -- as at bringing to a halt virtually every effort on the part of BPA and the publicly- and investor-owned electric utilities in the Pacific Northwest to provide energy to the people of the region. At the time, virtually every participant in the regional power systems foresaw the prospect of a severe shortfall in energy resources during the decade ahead, yet litigation brought under NEPA threatened the very existence of Phase 2 of the Hydro-Thermal Power Program, which BPA and its over 100 customers with diverse interests carefully had worked out to the end that people could have jobs and the other social benefits of an adequate energy supply.

In that speech, I urged my audience "to take up this dialogue." To my chagrin, I learned that verbal challenges as I issued that day can be counter-productive. I now realize that, regardless of the amount of frustration one feels when those programs and policies in which he earnestly believes are sidetracked by antagonists who have equally earnestly held convictions, dialogue is better served by lowering the temperature of the rhetoric.

I am acutely aware that, to be successful as Secretary of Energy, I first must succeed in the commitment I made to the Committee in my opening statement -- "to work with you and others toward a broadened energy consensus in the United States." In my first four weeks as Secretary of Energy, I already have begun that effort by, among other things, meeting with a substantial number of leaders of environmental and conservation organizations to engage in an exchange of views concerning a broad range of energy issues. The discussions have been cordial, straightforward, and I believe, beneficial for all concerned. I have asked my staff to try to arrange follow-on meetings in the near future.

In all fairness, I suggest it would be appropriate to note that the persons who bore the brunt of my remarks over seven years ago purposefully were described by me as being a small faction -- in contrast to what I termed "the responsible majority of environmentalists." I am satisfied that, while the present leadership of environmental and conservation organizations may have some policy disagreements with me, we can interact with each other in a manner which, based on mutual respect, will produce the broadened energy consensus I seek.

7. The National Institute of Building Sciences, an organization created by Congress to provide technical guidance on matters relating to building science and building research, is working on the National Program Plan for the Thermal Efficiency of the Building Envelope. This effort, I understand, involves public and private organizations seeking to create a framework for efficient use of energy conservation research dollars. Do you intend to support this initiative, and, if so, how?

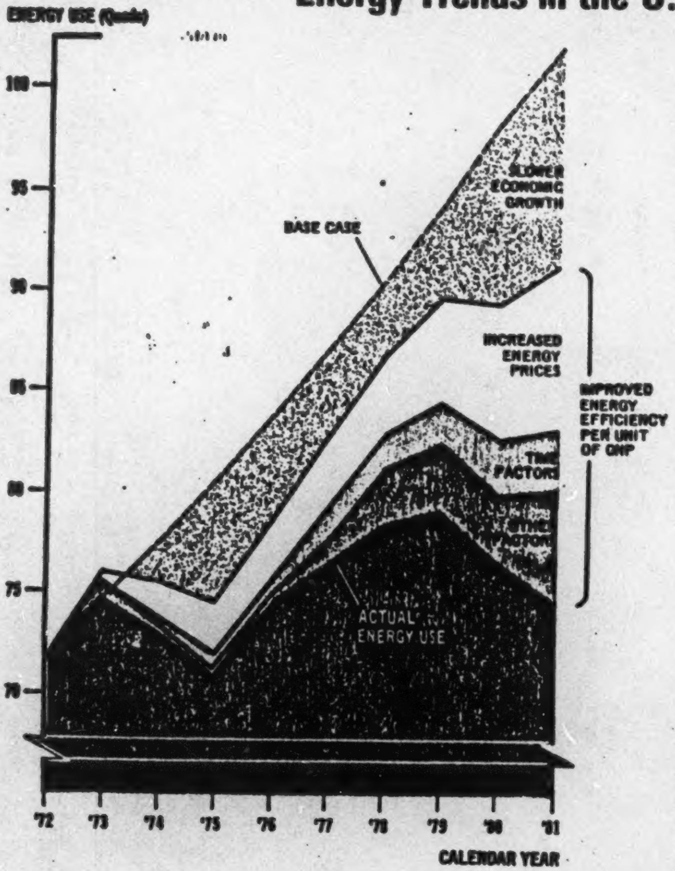
Answer: As early as 1974, I stated in a speech before the Western Energy Congress in Wenatchee, Washington that one of the ways to expand the Nation's then-fledgling energy conservation program and to abate the high growth rate of overall energy use would be to amend building codes so as to reduce space heating requirements in winter and cooling requirements in summer. That thought may or may not reflect the best approach to the problem, but it is indicative of my support for a concerted effort by government and private industry to work together to identify potential energy savings through conservation.

I understand that the current National Program Plan for the Thermal Performance of Building Envelope Systems and Materials is a revision of an initial plan issued jointly by the Department of Energy and the Department of Commerce in January 1979. I support the current efforts of DOE to work with the Congress and the building industry to develop an appropriate research agenda for the buildings sector. One of these efforts is our participation with the House Science and Technology Committee and several buildings organizations in a workshop, January 12-15, designed to develop such an agenda.

8. The Naval Nuclear Propulsion Program has played a pivotal role in our Nation's defense for the past 30 years. Recognizing the importance of preserving the authorities that have been essential to the success of this program, President Reagan, last February, issued Executive Order 12344 which sets forth the authorities and responsibilities of the Director of this program. Although the responsibility for this program rests squarely on Admiral McKee's shoulders, I would like your assurance that under your tenure, the Department of Energy will continue to give him the same strong support that the program has enjoyed under your predecessors and will resist any efforts to reassign any of those authorities to other government or military officials.

Answer: The organization for carrying out the Naval Nuclear Propulsion Program is mandated by statute (the Department of Energy Organization Act and the Atomic Energy Act) and by Presidential Executive Order, as you point out. I have no intention of proposing any alteration in these arrangements. The program will have my firm support and vigorous interest.

Energy Trends in the U.S. Economy



- ENERGY USE in 1981 was down 26 quads from the base case.
- These ENERGY SAVINGS (27%) are the result of several factors:
  - SLOWER ECONOMIC GROWTH (11 quads).... GNP slowed from 4.0 to 2.7 percent per year after 1972;
  - HIGHER ENERGY PRICES (8 quads).... motivating accelerated efficiency improvements, better energy management, and changes in consumer preferences;
  - TIME FACTORS (3 quads).. improved energy efficiencies consistent with trends of the last several decades;
  - OTHER FACTORS (6 quads).. accelerated efficiency improvements not directly related to increased energy prices, including:
    - accelerated economic trends away from heavy industry toward the service and information industries, and lighter manufacturing;
    - technological advances: R & D, turnover of capital stock, expansion of modern businesses, and other recent innovations;
    - energy shortages: gasoline lines, fuel allocations and natural gas curtailments;
    - deregulation of energy using industries — airlines, trucks, and railroads — allowing more flexibility to become energy efficient;
    - increasing public awareness, through the news and other media, of the energy crisis and solutions;
    - conservation programs of utilities, the private sector, and state and federal governments, including tax credits and deductions for conservation investments;
- FEDERAL PROGRAMS and TAX CREDITS probably account for less than 5 percent of the overall increase in energy efficiency per unit of GNP due to ENERGY PRICE INCREASES, TIME, and OTHER FACTORS.

Source: R. Marlay, Office of Policy, Planning and Analysis, U.S. Department of Energy. Analysis based on data from the U.S. Department of Commerce and the Energy Information Administration, and on statistical work of the Oak Ridge National Laboratory, Oak Ridge, TN.

RESPONSE TO QUESTIONS FROM SENATOR CHARLES McC. MATHIAS, JR.

1. I understand that it has been recommended that most of the $500 million in oil company refunds, collected by the Department for oil prices exceeding guidelines under the Emergency Petroleum Allocation Act of 1973, be distributed to state governments for use in state and local energy conservation programs. Do you intend to implement that recommendation? If so, will you continue to follow this policy for additional refunds expected to be obtained from oil companies in the next two years?

Answer: The Department of Energy currently holds in escrow approximately $520 million collected from over 500 oil pricing enforcement cases. Of this amount, $236 million is subject to administrative claims proceedings conducted by the Department's Office of Hearings and Appeals (OHA). The OHA will make the final determination on the distribution of this $236 million, most of which will be refunded to successful claimants.

The remainder of the escrow funds, amounting to approximately $285 million, is subject to disposition by the Department. Some of these funds are owed to specific customers of the companies that paid into the escrow account. The Department presently is reviewing audit files to identify these harmed parties to determine the amount of refunds.

The balance of the funds (between $200 and $250 million) comes from cases in which specific, harmed customers cannot be identified. The Department will distribute these funds in a manner that conforms to the legal guidelines relating to restitution. Payments to the states is one option available to the Department. I have not had the opportunity to be fully briefed on this and other options under consideration by the Department and thus am not in a position to indicate my decision. I will, however, give serious consideration to a proposal involving distribution of funds to the states.

With respect to future settlement refunds, the Department will continue its policy of payments to the states in those cases where the facts and circumstances support this remedy. Several settlements should be announced soon that include substantial payments to the states.

2. What do you see as the Department's commitment to promoting and supporting basic research on alternative sources of energy? Specifically, what is the Department's commitment to: ocean energy systems; hydrogen energy research; conservation programs; solar energy systems, and wind energy?

Answer: The Department of Energy within budgetary constraints is fully committed to supporting basic research on alternative sources of energy in all areas that have been identified as being in the National interest and in which industry agrees are needed, but which industry is unable to pursue for corporate reasons. I am advised that the current and projected DOE activities in each of the areas mentioned in the question are as follows:

In ocean energy, DOE's program will concentrate on completing the preliminary design work for a 40 MW pilot plant, bringing it to the stage where private sector investment could continue the development program if economic factors warrant. Present technical efforts center on heat exchanger type and working fluid, biofouling and corrosion research, cold water pipe type and deployment measures, as well as research on "open-cycle" systems and at-sea manufacture of energy intensive products.

The hydrogen program will explore long-term research on high temperature electrolysis and anode depolarization. The program also will focus on exploratory developments including static feedwaters electrolysis and an integrated test bed. These activities may result in alternative production and storage/transport alternatives allowing the use of hydrogen as an alternative fuel in the future.

The conservation research program will focus on: heat transfer and fluid mechanics to conduct fundamental studies and research on heat loss in buildings, building equipment and vehicles and industrial equipment; thermochemical research to conduct generic investigation on combustion processes to design more efficient internal combustion for engines and commercial and industrial furnaces; material research to conduct studies on advanced materials including ceramics and lighting materials; and electrochemical research to provide improved technology for electric vehicle and stationary storage applicators including improvements in power density, energy and cycle life. Technology transfer activities will assure that results on research and development are disseminated to the private sector.

In solar energy, DOE's program supports work in high and low temperature solar thermal technologies, photovoltaics and biomass energy. Research is conducted to expand the technology base for industrial exploitation. Selected, unique test facilities are maintained, and several system experiments are being completed.

In wind energy, DOE's program will emphasize research in aerodynamic loads, structural dynamics, materials characterization, fatigue testing, wind behavior, and system performance testing to improve system efficiencies and structural strength. Present technical efforts are completing the predesign at the Mod-5 turbine.

RESPONSE TO QUESTION FROM
SENATOR SPARK MATSUNAGA

1. As you may know, the Ocean Energy Council, representing industry groups involved with ocean thermal energy conversion (OTEC), supports the use of OTEC funds to continue funding for two OTEC pilot plant designs. I, too, believe it is important to continue to direct funds for both designs. Would you, as Secretary of the Department of Energy, support the continuation of the two OTEC Pilot Plant conceptual designs into the preliminary design phase (Phase II)?

Answer: As I stated during my confirmation hearing, I am favorably inclined to support some further research and development in the area of OTEC technology. The Department is currently supporting the two OTEC projects you have mentioned through the completion of conceptual designs (Phase I). Assuming favorable progress with and evaluation of Phase I, our intent is to proceed into the preliminary design stage (Phase II) for at least one of the two projects. Our decision regarding the number of awards and the appropriateness of further financial support will be based on the results of the conceptual design phase (Phase I).

RESPONSE TO QUESTIONS FROM
SENATOR WILLIAM PROXMIRE

1. The Department of Energy has been exploring possible sites for a permanent nuclear waste repository. The State of Wisconsin, which is under consideration has had difficulty getting accurate information from DOE. The state learned it was being considered because of a newspaper article. Since that time, DOE and the state government have had frequent disputes about policy towards site exploration. Can you set out a policy you will use to repair the damaged relationship between Wisconsin and DOE regarding nuclear waste? Will you pledge to set up a meeting with representatives of Wisconsin state government and DOE to iron out differences?

Answer: I have been given the following advice on this matter:

The Department is committed to working closely with the states in all phases of its program to provide geologic repositories for the disposal of radioactive waste. Wisconsin is one of 17 states having crystalline rock or granite formations which DOE is evaluating for a second waste repository. These studies are at a very preliminary stage involving only surveys of existing literature and will provide the basis for recommending where future field studies should be conducted.

I am advised that the Department currently is responding to a request from the Wisconsin Radioactive Waste Review Board for information on DOE's Lake Superior crystalline rock study program, and that we already have informed Wisconsin officials that Department representatives will meet with them in January to discuss our program and ways to maintain better communications. I believe these efforts will lead to improved relationships with the state and reduce the potential for future problems.

2. According to recent reports, a significant percentage of all U.S. energy conservation was achieved by the residential customers (households). However, DOE has come out against federal appliance standards and is trying to preempt state standards. Wisconsin is in the process of writing its own appliance standards. Why shouldn't they be permitted to impose them?

Answer: Section 327 of the Energy Policy and Conservation Act (EPCA), as amended, preempts any state standard establishing appliance efficiency standards, once DOE promulgates federal standards, if the state standard is not identical to the federal one. This is a consequence of the statute itself and applies regardless of the form any federal standard takes. However, section 327(b) of EPCA further provides states the opportunity to obtain a rule waiving such preemption under tests set forth in the Act. The Secretary may grant such a waiver upon a finding that (a) there is a significant state or local interest to justify the state regulation, and (b) the state standard contains a more stringent efficiency standard than the federal one, unless the Secretary finds that the state regulation would unduly burden interstate commerce. The Department now is drafting final regulations implementing procedures for granting states waivers from the appliance efficiency standard preemption contained in EPCA and will publish them shortly. The State of Wisconsin would be entitled to file a request for a waiver from preemption for any of its appliance efficiency regulations to which federal standards become applicable.

3. Can you explain why you approved federal coal leasing regulations which extend the diligent development requirements for pre-1976 leases beyond the ten years clearly required by the statute? I have been unable to find any adequate explanation for this change in the regulations, which will give these leases until 1996, instead of 1986, to come into production.

Answer: I am advised by counsel at the Department of the Interior that the diligent development requirements of the Federal Coal Leasing Act Amendments only apply to leases issued in 1976 and later. The statute has has been interpreted to have no immediate effect on leases issued pre-1976 until such time as those leases are readjusted.

Since pre-1976 leases had a term of 20 years, it is possible for some of those leases to run until 1996 without being subject to the requirements of the Federal Coal Leasing Act Amendments. However, if and when they are readjusted at the conclusion of their 20-year term, they would be subject to the Act.

4. In 1975 and 1976 did you ask members of the public to write their members of Congress to ask for changes in the National Environmental Policy Act? Did you use federal funds for this purpose?

Answer: To my very best recollection, I have not asked members of the public to write their members of Congress to ask for changes in the National Environmental Policy Act (NEPA). This question, however, may have reference to a July 1975 speech I delivered. In that speech I stated: "I have no quarrel with that Act [NEPA] or what I believe to be its intent. We have a right to demand both a clean environment and economic opportunity." But I described in some detail what appeared to be the efforts of some at that time to use -- misuse, in my view -- NEPA "to obstruct the orderly progress of obtaining the power supply this [Pacific Northwest] region must have if we are to continue to provide for a reasonable lifestyle for ourselves, our children and the generations to come."

I believe that the speech clearly indicated my support for environmental laws of our nation. Several options came to mind for alleviating some of the problems I had described, which I outlined without advocating any particular action. These were offered simply to provide some ideas for consideration in the public debate on this subject. I stated:

> "I do not have a set of pat solutions, but we might consider the following: (1) a legal or regulatory point of final decision where a project is either approved or disapproved, and no further complaints are permitted, (2) an obligation on the part of a plaintiff who abuses the NEPA process to pay the damages caused by his actions, and (3) a statute of limitations on lawsuits which challenge the adequacy of Environmental Impact Statements."

The audience before which I spoke consisted of opinion leaders from all segments of the Portland, Oregon community. After a discussion of the problems we faced, I urged the listeners:

> "... [T]o take up this dialogue. If you belong to an environmental organization, scrutinize its policies and how your dues are being spent. If you have friends who are members, ask them if they know what is being done in their names. Urge them to blend their best efforts to getting their club or association back on its original, constructive course.
>
> Talk to your business colleagues, talk to our State and local office holders. Write to your Congressmen. Tell them these delays are costing jobs now and for the future. Tell them we're jeopardizing our economy and our way of life."

The speech triggered a spirited and sharply mixed reaction. There were numerous requests for copies of the speech, so BPA printed copies accompanied by an introductory letter from me in which I said to people who had asked "What can I do?" that they should send me their written comments, with the understanding I would bring them to the attention of the Pacific Northwest Congressional delegation. It was my hope to foster an increased public debate on the issues facing the region and to provide my good offices in facilitating communication between the citizens of the Northwest and their elected officials.

5. As a part of the Department of Energy reorganization effort, the President has recommended moving the power marketing agencies from DOE to Interior. Since you have served as Director of BPA and as a high official of Department of the Interior, where do you believe these agencies belong?

Answer: As a result of my experience both at BPA and at the Department of the Interior, I believe that the Power Marketing Agencies can be managed most efficiently by being made a part of the Department of the Interior.

6. The Continuing Resolution recommended a restriction on a study by OMB of the proper price to be charged federal hydro electricity customers. Do you support completion of this study?

Answer: In light of the continuing resolution which has been signed into law, I do not support completion of this study.

7. What have you learned from the difficulties with the WPPS system (nuclear plant cancellations, etc.)?

Answer: Volumes could be written in response to this question. However, the essential thesis would be that large construction projects can be greatly affected by circumstances beyond a reasonable level of prediction. If enough such events occur, the impact can be horrendous on the participants.

To mention just one example: there were discussions from time to time among the participants about what would happen if there were a "dry hole," i.e., a plant could not operate or be completed. The situation was covered by contract, but it seemed to me at the time that there was no serious belief among the parties that such an event really could occur. To have asserted then that it might, in the manner that has now resulted in the problem with WPPSS Projects Nos. 4 and No. 5, would have been greeted with derision as too farfetched to be seriously considered. Price escalation, alone, simply would not have been believed to be able to reach present levels.

Obviously, we all have learned that these events could occur in the construction efforts in such large projects.

8. What do you view as the proper timetable for transfer of DOE functions to other agencies?

Answer: The proper time for transfer of the DOE functions to other Departments is following Congressional approval of legislation providing for the transfer.

RESPONSE TO QUESTIONS FROM SENATOR TSONGAS

1. Do you fully support the substance and execution of Administration energy policy as established and carried out by former Secretary Edwards? Are there areas, such as budget priorities, in which you would like to see changes? If so, what are they?

Answer: I am not aware of any general policy areas where I have conscious disagreements with former Secretary Edwards. I believe he did a fine job as Secretary of Energy in what undoubtedly were trying circumstances because of the major changes to the focus of energy policy introduced after this Administration took office.

In my opening statement and during the exchanges of questions and answers thereafter, I have endeavored to state as accurately as I can my basic energy philosophies and the direction from which I will approach specific energy issues. Among other things, I have stated I shall carefully review the Department's budget materials for the purpose of making my own policy and budget recommendations to the President in light of my basic energy philosophies.

2. Administration energy policy has maintained that the development and commercialization of solar energy and energy conservation should be left to the private sector and the free market. If solar and conservation are uneconomic, then they do not merit government support. Yet the Administration acknowledges that nuclear power faces economic difficulties and justifies a massive Federal program over $1 billion to overcome market and nonmarket barriers. How do you reconcile this apparent contradiction?

Answer: Conservation and renewable resource programs, including solar energy, have an immensely important role to play in the mix of energy resources upon which our Nation must rely. Taking conservation as an example, my strong belief is that it is erroneous to associate it with the word "uneconomic," for my own experiences both in and out of government have satisfied me that conservation not only is economically sensible, but imperative. I will support federal government funding of those research and development efforts concerning conservation and renewable resources, including solar, which are consistent with the Administration's general policy of focusing federal research and development expenditures on long-term, high-risk, high-payoff, generic technologies that are beyond the capability of the private sector to support.

Upon my inquiry, the Department has advised me that the Administration's budget request for FY 1983 for nuclear energy supply research and development is entirely consistent with its abovementioned policy. Of the $1.016 billion requested for such programs, $265 million are for waste management, an area in which the federal government has statutory responsibilities, $50 million are for remedial actions in regard to previously used nuclear material, processing facilities and sites, and $31 million are for advanced nuclear systems for space programs.

The balance of $670 million for nuclear fission programs with commercialization potential is justified on the grounds that nuclear power plants can be an important, economically sound part of the mix of the Nation's energy resources. The fact that the nuclear power industry has been experiencing certain economic difficulties in the past few years does not warrant a conclusion that nuclear generated electric power is or will be uneconomical. One of the ways the federal government can make nuclear generated power more economical, without involving federal outlays, is to follow-up on the initiatives identified in the President's nuclear policy statement of October 8, 1981, including, but not limited to, streamlining the federal regulations applicable to this energy resource.

As indicated in my confirmation hearing, however, I intend to inquire further into the issue of balance in availability of resources and to provide support to the wide range of DOE research programs.

3a. You have referred to a national market based pricing structure for energy. In making progress to a truly free market system, do you favor: a) eliminating the oil depletion allowance and expensing of intangible drilling costs?

Answer: I believe that the appropriate federal agency for determining policy concerning elimination of the oil depletion allowance, as well as the expensing of intangible drilling costs, is the Department of Treasury. As Secretary of Energy, it will be my responsibility in the policy-making process to offer advice on specific oil tax issues as they arise. However, at this time, I am not familiar enough with the federal revenue issues as they relate to the oil production industry to have a personal opinion.

3b. You have referred to a national market-based pricing structure for energy. In making progress to a truly free market system, do you favor: * * * b) eliminating the Price-Anderson Act?

Answer: No. The Act provides for an immediate large source of funds to respond to claims for public liability following a nuclear incident if one ever should occur. My understanding is that Congress considered the amounts of private exposure and government indemnity when the Act was extended in 1975, and chose to phase out over several years the federal government's role, which will end when the Nuclear Regulatory Commission issues its next operating license for a power plant. Coverage for commercial licensees then will be provided only by the private nuclear insurance pools and by the plant operators. The Act expires in 1987, and comprehensive reports to

Congress from the Department of Energy and the Nuclear Regulatory Commission are due on August 1, 1983. Those reports will provide a further opportunity to consider changing the scope of existing private coverage.

3c. You have referred to a national market based pricing structure for energy. In making progress to a truly free market system, do you favor: * * * c) taxing oil to pay for the Rapid Deployment Force which will be used to defeat the Middle East?

__Answer__: I believe the Department of Treasury has the primary responsibility for federal policy on oil tax issues, although I suspect the Departments of State and Defense and the National Security Council might well have views on this particular matter. As Secretary of Energy, it will be my responsibility in the policy-making process to offer advice on specific oil tax issues as they arise. I would want to consider the opinions of these Departments and agencies before reaching my own conclusions on this issue.

3d. You have referred to a national market-based pricing structure for energy. In making progress to a truly free market system, do you favor: * * * d) taxing coal to pay for treatment of lakes damaged by acid rain?

__Answer__: On the basis of my present information, I do not believe it would be appropriate to tax coal to pay for treatment of lakes allegedly damaged by acid rain. While a connection exists between combustion of coal and the presence of So_2 and No_x in the atmosphere, I am advised that the results of analyses to date have not established conclusively a connection between combustion of coal in any given area and the presence of acid in lakes nationwide. Environmental control mechanisms currently are being utilized to reduce coal combustion emissions into the atmosphere, and I will support efforts to identify even more advanced mechanisms to reduce such emissions further.

3e. You have referred to a national market based pricing structure for energy. In making progress to a truly free market system, do you favor: * * * e) releasing natural gas transmission companies from contract provisions that restrain free market forces?

Answer: In general, I feel that the federal government should not relieve businesses from their freely negotiated contracts. However, in the case of natural gas contracts, I am aware of the view that a number of special clauses were entered into as a direct consequence of, and in reliance upon, the regulatory scheme governing the pricing and distribution of natural gas. It has been asserted that these clauses are creating or could create a result clearly adverse to consumers and to the public interest.

4. The Magnetic Fusion Energy Engineering Act of 1980, which passed Congress almost unanimously, sets forth an aggressive research program to develop fusion technology. Fusion is clearly a long-range, high-risk, high-payoff technology which industry is unable or unwilling to undertake. Do you support an aggressive fusion program, and how do you intend to carry out the Congressional intent established in the Act?

Answer: President Reagan's National Energy Policy Program Plan says "The Federal Government recognizes a direct responsibility to demonstrate the scientific and engineering feasibility of nuclear fusion." The question the Department of Energy has to address is how to accomplish the basic intent and goals of the Act in the present fiscal climate.

I am informed that DOE has reordered the program priorities to focus on identifying a suitable fusion plasma confinement concept. The Department's research and development efforts seek to resolve critical technology issues in this decade and to develop the specific scientific and engineering base for decisions on fusion's commercialization in the next two decades. This approach, I am advised, is sufficiently broad and flexible that it is possible to change the program's pace to meet changing fiscal or technical circumstances.

I am informed, further, that this approach does not include a Fusion Engineering Device in the time frame specified by the Act; however, it does include a large-scale engineering program in the next decade in which an advanced engineering facility could be the central element, assuming resources then can be made available. The program is laid out, however, in such a way that essential progress continues to be made even if provision of those additional resources is delayed. The Department's objective has been to develop a program that fulfills the intent of the Act.

This program is of interest to me and, in fact, was the first DOE funded project which I visited (November 20, 1982).

5. How serious do you believe the atmospheric buildup of CO_2 to be? Are you aware of the recent National Academy of Sciences study that reconfirmed its earlier analyses that indicated a $3^{\circ} \pm 1.5^{\circ}$ C change in global temperature if CO_2 levels double? Given the atmospheric potential of CO_2 buildup and level of scientific uncertainty, do you believe we should maintain or strengthen research programs to study this problem?

Answer: I have inadequate personal knowledge to evaluate the seriousness of CO_2 buildup. The Department of Energy is aware of the recent National Academy of Sciences' study. I am advised that the Department has adopted a focused research program, the objective of which is to establish the scientific base so that we can determine the effects, if any, of increasing atmospheric CO^2, and how we can first detect it. The Department believes that a better scientific foundation is required than is now available and that, therefore, we should continue to support a strong scientific program in this area.

6. In a number of fields, other countries are investing heavily in their industries' development programs. Investments by France and others have been used by the Administration to justify the Clinch River Breeder Reactor Project. Japan is investing heavily in photovoltaics, yet the Administration policy is to leave solar energy to the free market. Do you think this is a wise policy in light of the emergence of Japan as a principle high tech competitor? Why should we respond to other countries on nuclear energy and not other areas?

Answer: I have been advised as follows:

The photovoltaic technologies hold a considerable promise for the future generation of electricity and represent an attractive high technology renewable energy option. These technologies have attracted considerable attention and investment worldwide. Over the past few years, industry and governments in a number of countries, especially Japan, have accelerated their research and development investments in photovoltaics.

The Department has supported, and continues to support, the development of these technologies. It is important to note that, from the inception of the Department through and including the Administration's FY 1983 budget request, the photovoltaic technologies are receiving the single largest share of renewable energy funding. Data in possession of the Department reveals that domestic manufacturers are making research and development investments in the field which are greater than the Federal expenditures. The U. S. industry currently produces approximately 80 percent of the world's photovoltaic cells. A number of sources estimate that the overall market for these devices should continue to expand through the mid-term and that the U. S. industry should expect continuing further growth.

In view of the foregoing, I believe the present level of Federal expenditures on photovoltaic research is appropriate; however, as I have indicated earlier, I will continue to examine the programs of the Department to ensure that a proper balance of priorities is reflected in our spending.

7. Given that conservation is capital intensive, and considering the current high interest rates, it seems unlikely that low income families can afford weatherization of their homes. There is also no incentive for landlords to weatherize. How do we achieve conservation in housing, given these realities?

Answer: Conservation, including weatherization, has an immensely important role to play in the mix of our Nation's energy resources. However, I believe programs involving social issues such as the low-income weatherization program are more apropriately administered by HUD and HHS, the agencies responsible for housing and human services, or by the states. The HUD Community Development Block Grants and Urban Development Action Grants and the HHS Low-Income Home Energy Assistance Program permit weatherization of low-income homes as an eligible activity under the grants. Unless and until legislation is enacted which transfers DOE's low-income weatherization programs to HUD and/or to HHS, I shall continue to cause DOE to administer those programs effectively in accordance with the Congressional mandate.

I have been informed of a proposal within the Department to recommend modifications to the federal weatherization guidelines which would allow more homes to be reached with higher efficiency weatherization measures. I understand this proposal will be presented to me in the near future. In addition, the government and the building industry cooperatively can work together to achieve housing construction standards which will help achieve cost-effective conservation. One of the types of useful mechanisms in that regard is the National Program Plan for the Thermal Performance of Building Envelope Systems and Materials.

8. What are your views on the role of the Synthetic Fuels Corporation?

Answer: I am confident that synthetic fuels from coal, oil shale, and other fossil energy resources will be contributors in our Nation's future energy mix, but an exact prediction as to when this will happen cannot be made accurately at this time. Government should not spend money to meet some pre-established production goal for synfuels. On the other hand, a limited number of first-of-a-kind synfuel plants, employing a diversity of technologies in a range of commercial scales, will give the business community the necessary information on which to base future investment decisions.

9. On July 11, 1975, you made a speech before the City Club of Portland, Oregon, widely referred to as the "Prophets of Shortage Speech," in which you launched a major attack on the motives of this Nation's conservation movement. Let me refresh your memory with a few quotes from that speech: "It is no longer just a conservation movement, but a crusade to stop all development in this country." "The greatest threat to the environmental movement is the environmental movement itself. Over the past several years, it has fallen into the hands of a small, arrogant faction which is dedicated to bringing our society to a halt. I call this faction the prophets of shortage. They are the anti-producers, the anti-achievers." Are these statements still an accurate portrayal of your attitude towards those people and organizations in this country who feel that energy conservation and the development of renewable energy sources are viable alternatives to building nuclear power plants? In this same speech you characterized the requirement to prepare an environmental impact statement, as required by the National Environmental Policy Act a "burdensome requirement upon a Federal agency ... ." Did you in fact oppose the request of several environmental organizations that you prepare an environmental impact statement on the Bonneville Power Administration's proposed Hydro-Thermal Phase Two Program? What was the final disposition of any litigation on this issue of BPA's EIS on the Hydro-Thermal Power Plant II? Can you provide any relevant court judgments and opinions for the Committee record?

Answer: The speech to which the question refers was made by me at a time when Bonneville Power Administration (BPA) and I, as its Administrator, were experiencing an enormous sense of frustration arising from a series of lawsuits which we felt were aimed not so much at achieving the true intent of the National Environmental Policy Act -- preservation of a clean and wholesome environment -- as at bringing to a halt virtually every effort on the part of BPA and the publicly- and investor-owned electric utilities in the Pacific Northwest to provide energy to the people of the region. At the time, virtually every participant in the regional power systems foresaw the prospect of a severe shortfall in energy resources during the decade ahead, yet litigation brought under NEPA threatened the very existence of Phase 2 of the Hydro-Thermal Power Program, which BPA and its over 100 customers with diverse interests carefully had worked out to the end that people could have jobs and the other social benefits of an adequate energy supply.

In that speech, I urged my audience "to take up this dialogue." To my chagrin, I learned that verbal challenges as I issued that day can be counter-productive. I now realize that, regardless of the amount of frustration one feels when those programs and policies in which he earnestly believes are sidetracked by antagonists who have equally earnestly held convictions, dialogue is better served by lowering the temperature of the rhetoric.

I am acutely aware that, to be successful as Secretary of Energy, I first must succeed in the commitment I made to the Committee in my opening statement -- "to work with you and others toward a broadened energy consensus in the United States." In my first four weeks as Secretary of Energy, I already have begun that effort by, among other things, meeting with a substantial number of leaders of environmental and conservation organizations to engage in an exchange of views concerning a broad range of energy issues. The discussions have been cordial, straightforward and, I believe, beneficial for all concerned. I have asked my staff to try to arrange follow-on meetings in the near future. I am satisfied that, while the present leadership of environmental and conservation organizations may have some policy disagreements with me, we can interact with each other in a manner which, based on mutual respect, will produce the broadened energy consensus I seek.

In all fairness, I suggest it would be appropriate to note that the persons who bore the brunt of my remarks over seven years ago purposefully were described by me as being a small faction -- in contrast to what I termed "the responsible majority of environmentalists," and that I specifically stated: "I have no quarrel with that Act [NEPA] or what I believe to be its intent. We have a right to demand both a clean environment and economic opportunity." Neither should one lose sight of my warning that we must avoid both excesses -- unrestrained development and abuse of the NEPA process -- and that I wholeheartedly endorsed the suggestion of the then-Governor of Oregon, with whom I otherwise had political differences, that we as a society must adopt a "common sense" approach to development and environmental problems.

I have no personal quarrel with the people and organizations whom the question describes as feeling that "energy conservation and the development of renewable energy sources are viable alternatives to building nuclear power plants." As my opening statement to the Committee made plain, those are exceptionally important energy resources which I long have supported and intend to continue to support at the Department of Energy. Nevertheless, as I stated to the Committee, I believe in "the need for a broad mix of energy resources, ranging from conventional to renewable to exotic."

It is true that the Natural Resources Defense Council and other environmental organizations did request BPA to prepare an environmental impact statement (EIS) in regard to Phase 2 of the Hydro-Thermal Power Program referred to in my 1975 speech. BPA already had prepared a draft EIS, entitled "BPA Participation in Regional Interutility Cooperation," which it believed was appropriate, although the Chairman of the Council on Environmental Quality later disagreed. More importantly, the BPA legal staff and the attorneys representing one of the major BPA customers scheduled to sign a contract implementing Phase 2 (known as the Umatilla contract) were of the strong and unanimous view that no EIS was required because, since Phase 2 was a cooperative enterprise between BPA and wholly nonfederal participants, it was not within the scope of NEPA. On the basis of that legal advice, I rejected the abovementioned request for an EIS on Phase 2.

Subsequent litigation held that, because of "federal enablement" of the regional power program, an EIS should be prepared. In one of those cases the court specifically determined: "The record indicates that defendants acted in good faith in not preparing an EIS before signing the Umatilla contract. Another federal court had ruled in their favor in related circumstances." Port of Astoria v. Hodel, 5 ELR 20657, 20660 (D.Or.1975) (emphasis added), affirmed 595 F.2d 467 (9th Cir. 1979).

The trial and appellate court opinions in the two, separate cases involving these matters are included for the Committee record in the Appendix hereto. In compliance with court directives to prepare EISs, BPA did so, and the litigation thereafter was dismissed.

10. As you are probably aware, Dr. Maxine Savitz, Deputy Assistant Secretary for Energy Conservation, has been dismissed for not accepting a clearly inferior position away from the Department Headquarters. This dismissal has generated considerable bipartisan Congressional protest, with more than 15 Senators objecting to this action. In light of your stated "high regard for the professional, career Federal employees" and your desire to "foster a stable atmosphere within the Department," do you intend to reinstate Dr. Savitz if you are given the opportunity to do so?

Answer: I have made inquiry into the matter of Dr. Savitz. I have been told that the matter has been properly handled throughout. At this time, however, the matter is before the Merit Systems Protection Board (MSPB) for review.

I have carefully and openly stated on all occasions when this question has been raised that, regardless of what I might have done in the initial circumstances, if the management people properly made their management decision, I would not repudiate that decision. I do have a high regard for the professional, career federal employees, and I intend that DOE be managed with that view firmly in mind. At the same time, sound management requires, as I see it, that the Assistant Secretaries be given maximum flexibility to make personnel decisions in full compliance with the laws.

If the MSPB finds there was failure to comply with the law in this matter, I promptly will act to see that proper steps are taken by the DOE to assure that Dr. Savitz receives all rights to which she then is entitled.

RESPONSE TO QUESTIONS FROM SENATOR LOWELL WEICKER

1. Mr. Secretary, this country recently concluded an agreement to purchase Mexican oil for the Strategic Petroleum Reserve. Part of this agreement required that the United States pay $1 billion dollars to Mexico prior to receiving their oil. Can you give the Committee the exact, current price per barrel that we are paying Mexico, and can you tell the Committee what formula, if any, was used to arrive at this price schedule?

   Answer: I am informed that the price paid per barrel under the Pemex contract is the Pemex posted price as determined quarterly to reflect market conditions, subject to a maximum of $35 per barrel and a minimum of $25 per barrel. The contract itself and related documents are classified "confidential" as National Security Information. The Department briefed the Committee on this transaction at the time it was made, and we would be pleased to provide a further briefing at Senator Weicker's convenience.

2. Mr. Secretary, will yo actively support expansion of the Strategic Petroleum Reserve concept so that it includes regional reserves?

   Answer: The Energy Emergency Preparedness Act of 1982 requires the President to submit to Congress by December 31, 1982 a report on Regional Petroleum Reserves. This report will include "an analysis of the economic benefits and costs of establishing Regional Petroleum Reserves," as well as other information on possible sites and petroleum distribution capabilities in certain parts of the United States. The DOE has been working on this report over the last several months and, until it has been completed and I have had an opportunity to review its conclusions, it would be premature for me to make a decision on whether to support the regional petroleum reserves concept.

3. To your knowledge will the Administration seek decontrol of natural gas in the forthcoming session of Congress? The Administration has had two years to examine this issue, and I was wondering if it had reached a conclusion yet?

Answer: Last January, the President considered the recommendation of the Cabinet Council to decontrol natural gas. At that time, other domestic issues were of higher priority so that the President decided legislative proposals from him to deregulate natural gas were not appropriate at that time. The President promised to re-address the issue, and he informed the November 18, 1982 annual meeting of the Natural Gas Supply Association that his Administration "is strongly committed to the deregulation of the natural gas industry." To my knowledge, the President has not made a decision on the exact content of a legislative proposal or its timing as of this date.

4. Absent total decontrol of natural gas, does the Administration have any policy to deal with the so-called marketing ordering problems; that is, the "take or pay" and market out contract provisions?

Answer: To my knowledge, the Administration has not yet formulated its position in regard to such contracts. My own beliefs are that: existing contract provisions are not the only aspect of market ordering problems; price controls also create market anomalies and threaten a smooth transition in 1985 and may have encouraged many of the "problem" contract terms since pipelines often were unable to bid for gas on price terms; all market ordering problems should be solved at once; and, therefore, it would be inappropriate to interfere with contractual terms to benefit one party to the contract without addressing the price controls that have been disadvantaging the other party.

5. Comparing the first seven months of 1982 v. the same period for 1981, I find that domestic production of natural gas is down 5.5 percent, domestic consumption is down 4.5 percent, yet imports of more costly foreign natural gas are up 9.1 percent. What is your analysis of these figures?

Answer: Pipelines signed contracts with foreign exporters of gas at a time when they were experiencing shortages and believed demand would continue to grow. Although market conditions now have changed, these pipelines cannot easily ignore their take requirements under the contracts. I believe a decontrolled domestic market eventually would force foreign sellers to price their gas in a marketable fashion since United States purchasers no longer would be paying "above-market" prices for deregulated gas.

6. Earlier this year Congress supported a waiver package which was to enhance the possibility of financing the Alaskan Natural Gas Pipeline. What is the present status of the pipeline's financing?

Answer: On April 30, 1982, the sponsors of the Alaskan Natural Gas Pipeline announced a change in their proposed completion date from November 1987 to 1989. According to the consortium, the extra time will be used to assemble a financing plan. I am advised that DOE knows of no further developments with regard to this new financing plan.

7. In the recent past, the Department of Energy has evidenced little or no support for an aggressive energy conservation program, relying instead on the theory that market pricing would encourage appropriate conservation measures. To me this smacks of "rationing by price," and I want your assurance that you will support full and adequate funding for such programs as low income weatherization and weatherization of schools and hospitals. Will you make such a commitment?

Answer: As I discussed in my opening statement, conservation is an area which will receive my emphasis as Secretary. I have advocated for many years that conservation should be considered a resource, and I intend to speak out forcefully and often, as Secretary, to promote conservation. To put conservation to work, it must be managed as we manage our other resources. Oftentimes a dollar invested in conservation can far exceed the return we can generate in comparison with other resources.

I do believe the marketplace can allocate scarce resources in the most efficient manner, and am concerned that artificially low prices not reflective of the marketplace can create an atmosphere which is not consistent with the national conservation imperative.

I believe a weatherization program can achieve real energy savings, lessening the financial burdens of lower income families. However, I am not inclined to believe the best place for such a program is in DOE. Departments such as HUD and HHS are far better suited for economic assistance programs, such as direct grants. Essentially, I believe the Department of Energy's role is much better suited to handle high-risk, long-term, and high payoff research on generic energy and conservation technologies rather than being the agency responsible for federal assistance programs. However, unless and until legislation is enacted which transfers DOE's low-income weatherization programs to HUD and/or to HHS, I shall continue to cause DOE to administer those programs effectively in accordance with the Congressional mandate.

8. Mr. Secretary, the Department has frequently been criticized for the delays involved in moving programs out of the research stage and into the commercialization stage. Yet, one such process involving coal gasification is now slated to be applied by Westinghouse and EG&G at the New England Energy Park. Without the Federal research effort this process might never have been available for commercialization, and indeed there might not even be a New England Energy Park. By the same token, the fuel cell has made impressive gains as a possible energy resource, yet the Administration

has seemed reluctant to encourage effective funding for fossil fuel program, so my question is will you support the present level of fossil R&D set by Congress at roughly $300 million?

Answer: The Administration's budget requests for research and development within the Department for FY 1982 and FY 1983 reflect an orientation toward more generic, high-risk, long-term activities not carried out by industry. This approach recognizes that certain worthwhile research and development programs simply cannot be funded and others must proceed at a slower pace than they would if budget realities were different. By focusing on basic and applied research through, in some cases, proof-of-concept, rather than on large-scale pilot and demonstration facilities, the Department's approach places on the private sector the responsibility to select the most promising technologies and to set the pace for the commercial application.

We recognize the Congress is considering an appropriations level for fossil energy in FY 1983 that is significantly greater than the Administration's request. When a 1983 appropriations bill is approved by the Congress and signed by the President, we will adjust our funding levels accordingly to ensure consistency with the Congressional directives.

Pending enactment of the 1983 appropriations bill, the Department is maintaining a fossil energy research and development program at a higher level than the Administration's request, consistent with the Continuing Resolution. This level is based upon the Majority and Minority recommendations of the House Science and Technology Committee and is intended to provide a stable planning level and to ensure adequate flexibility to adjust the fossil energy research and development program once final Congressional budget levels are established.

9. Mr. Hodel, your background with the Bonneville Power Authority has given you an opportunity to understand the advantages of federal assistance through regional hydropower financing authorities. Do you have any objection to the creation of such an authority to assist New England?

Answer: Each of the existing five power marketing administrations has been established to market hydropower produced at federal multiple-purpose water resource projects. If the Corps of Engineers were to install hydroelectric facilities at any of its projects in New England, the Department of Energy would be responsible under provisions of the Flood Control Act of 1944 for marketing that power. At that time we would have to determine whether the volume of power warranted the establishment of a new, separate power marketing administration or whether we could handle the necessary contracts through an existing administration or in some other fashion. Although these principles of general application likely would indicate no present need for a new power marketing authority, I am not sufficiently familiar with the New England power marketing situation to have developed a position on the issue you have raised.

INDEX TO APPENDICES

APPENDICES TO INSERTS FOR TRANSCRIPT OF HEARING:

Senator Bumpers

Letter from Under Secretary Hodel to Senator Jackson, dated July 14, 1982, together with enclosures.

Testimony of Assistant Secretary Carruthers, dated June 10, 1982.

Letter from Under Secretary Hodel to Senator Bumpers, dated July 14, 1982, together with enclosures.

Letter from Under Secretary Hodel to Congressman Markey, dated July 14, 1982, together with enclosures.

Testimony of David C. Russell, dated July 15, 1982.

APPENDICES TO RESPONSES FOR THE RECORD TO QUESTIONS FROM SENATORS:

Senator Baucus

Introductory portions of Environmental Impact Statement of Bonneville Power Administration ("Role EIS"), dated December 1980.

General Accounting Office Report, dated July 30, 1982.

Letter from BPA Administrator Peter T. Johnson to Congressman Hansen, dated September 8, 1982, together with enclosure.

Project Agreement for WPPSS Project No. 3, dated January 26, 1973.

Net Billing Agreement for WPPSS Project No. 3, dated November 27, 1972.

General Accounting Office Letter Report to Congressman Weaver, dated July 2, 1982.

Senator Tsongas

Opinions of the courts in:

Port of Astoria v. Hodel, 5 ELR 20657 (D. Or. 1975)

Port of Astoria v. Hodel, 595 F.2d 467 (9th Cir. 1979)

Natural Resources Defense Council, Inc. v. Hodel, 435 F.Supp. 590 (D. Or. 1977)

Natural Resources Defense Council, Inc. v. Munro, 626 F.2d 134 (9th Cir. 1980)

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 14 1982

Honorable Henry M. Jackson
United States Senate
Washington, D.C. 20510

Dear Senator Jackson:

This will respond to your May 14 inquiry regarding the Powder River Regional coal lease sale held in Cheyenne, Wyoming, on April 28.

The enclosed document provides answers to your questions 1 through 28. We will transmit a final response to question No. 28 as soon as possible.

Sincerely,

Donald Paul Hodel
UNDER SECRETARY

Enclosure

Question

1. With regard to DOI's coal leasing program, please provide a description of the decisionmaking process that DOI utilizes in determining when, where, and what quantity of coal is to be offered for lease.

Response

The Federal coal management program involves four major steps. The first step is land-use planning, where lands acceptable for coal leasing are identified in conjunction with other resource use decisions. This multiple resource management planning involves a four-part screening process. One screen classifies areas according to their coal development potential, i.e., deposits of sufficient quality to be potentially economic to mine. The other three screens—the application of 20 unsuitability criteria, multiple-use trade-off decisions, and surface owner consultation—are applied only to those areas assessed as having development potential.

The second step is activity planning. In this step, potential lease tracts in each coal production region (see Attachment 1) are selected and analyzed in an environmental impact statement. This phase of the program involves direct participation by State Governors or their representatives through the regional coal teams (RCTs). These teams serve as the forum for Department of the Interior (DOI)/State consultation and cooperation for Federal coal management actions in the region, such as guidance for tract delineation, tract profiles, and alternative regional leasing levels; ranking and selecting possible lease tracts; and proposing alternative sale schedules.

In the third step of the program, the Secretary selects a leasing target for the region. The leasing target decision is based on coal production goals and projections, industry and consumer information collected during activity planning, alternative leasing targets identified by the RCTs, estimates of production capacity not dependent on new Federal leasing and other pertinent factors. It is used to guide decisions on the quantity, timing, and geographic location of leasing.

The last step involves procedures for managing individual coal leases. From the time a tract is selected for sale until a lease sale is held, several administrative and statutory requirements must be completed. They include: (1) obtaining written consent from qualified private surface owners over federally-owned coal; (2) consultation with State Governors, the Attorney General, and Indian tribes; and (3) the determination of a presale estimate of each tract value.

Question

2. At the present time, how many coal leases have been issued by DOI? When were these leases issued? How much acreage has been leased? What are the estimated reserves? What has been the annual production from those leases for the last ten years? How many of those leases have had production?

Response

At the present there are 596 leases with a combined lease acreage of 897,161 and estimated in-place reserves of 35.7 billion tons. Economically recoverable reserves are estimated to be 15 billion tons. Coal has been or is being produced from 237 of these leases.

ISSUANCE OF LEASES

PERIOD	NUMBER OF LEASES ISSUED
1920 through 1929	22
1930 through 1939	27
1940 through 1949	37
1950 through 1959	79
1960 through 1964	118
1965 through 1969	213
1970 through 1974	31
1975 through 1979	23
1980 to present	46
TOTAL	596

Statistic Source: Automated Coal Lease Data System and Minerals Management Service Mining Offices

ANNUAL PRODUCTION OF FEDERAL COAL (from 1970 to Present)

YEAR	ANNUAL PRODUCTION (Million Tons)
1970	7.44
1971	10.08
1972	10.24
1973	14.03
1974	20.63
1975	26.90
1976	54.78
1977	51.94
1978	60.20
1979	60.28
1980	69.09
*1981	94.64

Production Source: Royalty Management, Minerals Management Service

*Tonnage for fiscal year 1981, the remaining figures are for calendar years.

Question

3. What is the status of mine plans for those leases not in production? How much acreage and estimated reserves are involved?

Response

	NUMBER OF LEASES	LEASE ACREAGE	LEASE RECOVERABLE RESERVES (Million Tons)
Approved Plans	232	332,236	7,478
Pending Plans*	56	96,630	2,798
Mine Plans with Federal Production	194	276,469	6,173
Producing Leases FY 81**	105	173,226	***

*No mine plans have been submitted for the remainder of Federal leases.
**FY 81 production, 94.6 million tons.
***Recoverable reserves not tabulated at this time.

Question

4. Please provide the schedule for future coal lease sales. Included should be dates, locations, numbers of tracts to be offered, and estimated reserves.

Response

Attachment 2 shows the schedule for all regional coal lease sales from fiscal year 1981 to fiscal year 1986, inclusive. Because definite sale schedules for coal production regions are determined by the Secretary at the end of the third step in the Federal coal management program, no specific numbers of tracts or their estimated tonnages can be given for any future coal lease sales.

Nevertheless, for both the Fort Union and the San Juan River Coal Production Regions, leasing targets have been determined and combinations of tracts delineated for study in the regional coal leasing environmental impact statements (EIS). For Fort Union, the Secretary selected a leasing target of 0.8- 1.2 billion tons. The Fort Union EIS will study a total of 22 tracts, in combinations ranging from a low of five tracts to a high of 15 tracts. The San Juan River EIS will study a total of 39 tracts, in combinations ranging from nine tracts to 39 tracts.

The sale schedules for Fort Union and San Juan will be determined after completion of the EISs and after consideration of all other relevant factors.

Question

5. How does DOI establish fair market value for coal leases?

Response

The Federal Coal Leasing Amendments Act of 1975 (FCLAA) provides that a lease may not be issued except upon receipt "of not less than fair market value, as determined by the Secretary." We do not establish fair market value (FMV) before lease sales are held. Instead, we determine whether the high bids on individual tracts constitute FMV after the sale. We do make a presale estimate of each tract value. FMV is a legal term, defined as the price a willing buyer will pay and a willing seller will accept (both knowledgeable but not under pressure). The DOI determines not to accept a high bid when we believe we would not achieve FMV. The FMV may be more or less than DOI's presale estimate. If the high bid is more than the estimate, we generally accept it. If the high bid is somewhat less than our presale estimate, we may or may not lease the tract to the high bidder, depending on our postsale evaluation.

We have in the past and may in the future use a computer model to generate a discounted cash flow (DCF) analysis indicating the "value" of a tract of coal. The DCF or income approach is well recognized as a method of evaluation. It can be a useful tool, but its reliability or accuracy is not good in predicting FMV of mineral leases unless it is used in conjunction with an evaluation of the results of sales. This is true because small changes in the estimation of either the selling price of coal or the mining costs, or in other factors such as the discount rate or mine production schedule, have a major effect on the estimated tract value. Comparable sales analysis have also been used to estimate fair market value where sufficient market data are available.

The market data or comparable sales approach is the preferred method of evaluation. Until recently, however, adequate and reliable market data were not available. The Minerals Management Service (MMS) (formerly the Conservation Division, U.S. Geological Survey) made considerable effort to obtain reliable market data for coal lands and did obtain sales data for tracts comparable to the Federal coal tracts offered for lease in the Powder River Basin.

In the case of Powder River, the comparison was made on the basis of recoverable tons. Adjustments were made for stripping ratio, coal quality, location of tract, and other factors. The comparable tracts under lease were sold in 1980, but no adjustment was made for the time differential. General economic and market factors indicated that a downward adjustment should be made to the 1980 sale price, but the specific amount was unknown. It was thought that a more accurate adjustment could be made after the sale using data obtained at the sale.

Question

6. In an effort to establish fair market value, does DOI undertake any exploratory core drilling to establish either the size or BTU value of the coal reserve?

Response

The Department of the Interior's U.S. Geological Survey (USGS) has conducted extensive drilling to determine the nature and extent of coal deposits on Federal land. About 10 percent of the holes drilled for coal on Federal land in the Powder River Basin were core holes from which samples of coal were obtained for quantity and quality analyses including BTU values. DOI uses data generated in coal lease sales in determining whether or not the high bids on individual tracts offered for sale represent fair market value.

Question

7. How is Sec. 8A(a) of the FCLAA, a provision that authorizes and directs the Secretary to conduct an exploratory program to obtain coal resource data, being implemented?

Response

In addition to exploratory drilling for coal lease sale data authorized under Section 8A(a), the MMS has recently implemented new procedures for obtaining available coal resource data from as many sources as possible. These sources include State geological surveys, industry, universities, USGS, and other Federal agencies. These data will provide the resource information necessary for MMS to carry out its responsibilities under the Federal Coal Management Program.

Leasable Minerals and Waterpower Land Classification Maps which are prepared by the MMS have been released in open file and/or published in the USGS Miscellaneous Investigations Series Maps (I-Series). A total of 94 maps have been released in open file and 22 published (scale 1:250,000) in the I-Series from 1976-1980.

At present DOI has identified approximately 110 high priority 1:100,000-scale quadrangle areas in western coal lands. These are the basis for implementing Section 8A(a) of the Federal Coal Leasing Amendments Act of 1975 (FCLAA). These high priority quadrangles cover approximately 1,600 to 1,800 square miles each and are selected from annual reports provided by the Bureau of Land Management (BLM). These BLM reports outline the DOI 5-year coal leasing plan and schedule on a State-by-State basis and indicate where and when coal resources information are needed for multiple land-use planning.

The USGS currently has ongoing work in parts of approximately 45 of the 1:100,000-scale quadrangles in New Mexico, Utah, Colorado, Wyoming, Montana, and North Dakota. USGS work consists of new mapping, establishment of subsurface stratigraphic and coal bed correlation networks, rotary and core drilling, coal quality determinations, development of innovative resource assessment methodologies and calculation and estimation of coal resources for each quadrangle.

Products from these studies are published in a looseleaf coal folio format at the 1:100,000-scale. This scale corresponds to BLM's land-use planning inventory, and multiple land-use planning scale. Consultation and coordination of derived data and products are carried out directly between USGS and BLM.

Question

8. In the Powder River Basin, how many exploration permits have been issued by DOI during the last 10 years? How much exploratory drilling was actually done in this region by industry during the last ten years? Is industry required to perform any exploratory drilling prior to lease? May DOI require exploratory drilling be performed prior to offering tracts for lease?

Response

The Federal Coal Leasing Amendments Act of 1975 (FCLAA) established a program whereby those seeking to conduct coal exploratory drilling on Federal coal land are required to obtain an exploration license. An exploration license is valid for two years and permits exploration on specific lands in accordance with an approved exploration plan.

Twenty-four exploration licenses covering about 167,100 acres in the Powder River Basin have been issued since 1976. Two of these licenses were issued so recently that exploration plans have not yet been filed; eight other licenses are still in effect, and drilling has or is occurring on them. In addition, since 1976, the U.S. Geological Survey has drilled 954 test holes in the Powder River Region. Prior to passage of the FCLAA, exploration on Federal coal lands was conducted under prospecting permits.

After consulting with State agencies we estimate that 50,000 holes have been drilled for coal in the Powder River Basin. These holes undoubtedly include development drilling. The DOI does not keep track of drilling by private companies on private coal lands.

Industry can provide data when expressing an interest in leasing, but is not required to provide drill-hole data (see 43 CFR 3420.4-2(e)). In the coal leasing by the application process, industry has to show the location of existing data on maps, such as drill holes, if they have such information, but industry is not required to drill (see 43 CFR 3425.1-7).

Although the FCLAA permits private, exploratory drilling, DOI may not require exploratory drilling to be performed prior to offering tracts for lease. Moreover, any data obtained by industry under an exploration license, must be furnished to the Secretary (30 U.S.C. 201(b)). Additionally, see our response to Question No. 7 of this document.

Question

9. Please provide a summary of the diligent development regulations proposed by DOE in December 1981, that will be incorporated in your coal leasing regulations. Provide a comparison with the diligent development regulations that will be superseded and an analysis of the effect of the proposed diligent development regulation on existing leases.

Response

The diligent development regulations were proposed by the Department of Energy (DOE) in December 1981 (46 F.R. 62226). Following the transfer of diligence rulemaking authority back to the Department of the Interior (DOI), the public was notified to file comments on the diligence rules proposed by DOE with DOI. Final diligence rules will be published by DOI as part of the final coal mining operations regulations, 30 CFR, Part 211.

The rules proposed by DOE contained the following provisions:

1. All Federal coal leases issued after August 4, 1976, are required to produce 1 percent of the recoverable coal reserves within 10 years after the effective date of lease issuance.

2. All Federal coal leases issued prior to August 4, 1976, are required to produce 1 percent of the recoverable coal reserves by the tenth year after the effective date of the first lease readjustment after August 4, 1976.

3. Federal coal leases issued prior to August 4, 1976, until the first lease readjustment after August 4, 1976, shall be subject to the diligent development provisions contained in the proposed Subpart D (46 F.R. 62226) unless the lessee elects within 1 year of the effective date of Subpart D to be governed by the clause in the lease which describes the minimum production requirement.

4. Any Federal coal lease included in a logical mining unit (LMU) shall be subject to the diligent development requirements imposed on the LMU in lieu of those diligent development requirements that would apply to the Federal lease individually.

The existing coal diligence regulations (see 43 CFR 3400) impose on all Federal coal leases issued prior to August 4, 1976, a production requirement of 2.5 percent of the lease recoverable reserves by June 1, 1986. A 5-year extension can be granted by the Secretary of the Interior for one or more of the following reasons:

1. time to complete development of an advanced technology such as synfuels,

2. time to complete development of a large mine,

3. or existence of a contract for 2.5 percent of the lease reserves.

Extensions can also be granted for administrative delays with the extension period equal to the length of the delay.

The existing diligence regulations impose on all Federal coal leases issued after August 4, 1976, a production requirement of 1 percent of the lease recoverable reserves by the end of the tenth year from the effective date of the lease. There are no provisions for extensions of the diligent development period for leases issued after August 4, 1976.

An analysis of the effect of the proposed diligent development regulation on existing leases follows.

1. For most leases issued prior to August 4, 1976, the proposed regulation would spread the production from individual leases over a longer time horizon. This is expected to result in more efficient, lower cost production because, unlike the current rule, it would not induce premature production. This should reduce costs and prices to industry and consumers relative to those that would result under the existing regulation.

2. The proposed regulations should also have a positive effect on competition, employment, investment, innovation, and on the ability of domestic firms to compete with foreign firms in domestic and export markets. This is likely to be true because the time extension afforded by the proposed rule would maintain a ready supply of leases that provide the most efficient supply for future coal users.

Question

10. Have any coal leases been terminated for lack of diligence or for lack of continuous operation?

Response

No leases have been terminated for lack of diligence or for lack of continuous operation. However, it is worth noting that for leases in existence on August 4, 1976, the deadline for diligent development (June 1, 1986) has not yet arrived. Likewise, for any leases issued after August 4, 1976, sufficient time has not yet elapsed to test the statutory 10-year diligent development period requirement.

Question

11. Identical criticisms have been levied against both DOI's OCS and coal leasing program. That is, DOI is consciously offering for lease vast areas of Federal lands during a time of recession in our nation which restricts the ability of industry to compete effectively and fully for such coal leases. By flooding the market, DOI is consciously depressing the market and thereby reducing its net return. What is your response to this?

Response

The intent of the Department in providing broad offerings of Federal coal leases is not to flood or depress the coal market. The objective is to lease sufficient coal to allow for efficient coal development. Coal which is not leased is not available to compete for contracts to supply coal to coal users. The Department wants to be certain that sufficient coal is leased such that the market for coal supply contracts will be fully competitive. Of course, coal leases in a fully competitive market for coal supply contracts will be worth less than coal leases in a restricted market. Thus, the Department can expect to receive lower bids for its leases under a policy of broad offerings than under a policy of tightly restricted offerings. Such pricing is the natural result of the Department's decision not to act as an OPEC-like monopolist, i.e., not to withhold Federal coal resources from the market in order to maintain artificially high price levels.

Question

12. What were the fair market values, on a lease by lease basis, for the tracts offered in the Powder River Basin? What were the apparent high bids for those tracts?

Response

The Department of the Interior has determined that the high bid constitutes fair market value for all tracts receiving bids except for the Rocky Butte. The following table presents the bidding results on a tract by tract basis.

Bidding Results

TRACT	TOTAL ACRES	HIGH BID ($/ACRE)	HIGH BID (¢/TON)
WYOMING			
Kealine	3,237.44	500.0	.048
Little Rawhide Creek	530.00	14,000.0	8.24
Rocky Butte	4,855.54	2,300.0	2.51
South Duck Nest	1,153.07	3,125.0	2.52
Spring Draw	3,686.67	7,025.0	8.20
MONTANA			
Spring Creek	658.26	*NB	*NB
North Decker	1,430.65	*NB	*NB
Colstrip D	2,249.79	25.5	.135
Cook Mountain	2,095.90	2,123.0	2.5
Colstrip A-B	1,632.38	25.5	.070
Coal Creek (SBA)	1,032.70	340.0	.043
Colstrip C	892.56	25.5	.118
West Decker	40.00	500.0	.020

*NB = No bids received.

Question

13. In a Status Report dated December 1, 1981, on the 1980 Federal-State Coal Advisory Board Recommendations, in the section regarding Forest Service and BLM Planning and USGS Drilling Schedules, it was recommended that a 5-year planning and drilling schedule be submitted to the Regional Coal Teams for their review and recommendations. It was stated that such a schedule would tend to assure that prospective areas are thoroughly reviewed in time to meet national coal needs. It appears that if this concept is adhered to, then the resource information should be developed as completely and accurately as possible. How then does DOI justify utilizing a Discounted Cash Flow model which assumes a 10% probability of development and 90% probability that the lessee will not find the type and quantity of coal to justify further development?

Response

The use of a 10 percent probability assumption in a discounted cash flow (DCF) model is reasonable and commonly made in assessing minerals such as oil or gas. However, such a low assumption would be most unusual for evaluation of a coal tract.

Moreover, the Minerals Management Service has never used such a probability in DCF economic evaluations of coal leases. For the Powder River sale, tract evaluations were made using market data (comparable sales method) as the preferred method.

Question

14. What was the average price per ton of estimated recoverable reserves that was paid for each tract in the Powder River Basin sale? In present day dollars, what was the average price per ton of estimated recoverable reserves that was paid for in the last competitive lease sale in 1970?

Response

The average price per ton paid for each tract in the Powder River Basin sale is listed in the table presented in the Department's response to Question No. 12.

At the last competitive sale in 1970 (two leases offered), recoverable coal reserves sold for an average of 0.59¢ per ton. When adjusted for inflation this amounts to about 1.12¢ a ton in first quarter 1982 dollars.

Question

15. What is the extent of the existing overcapacity in the Powder River Basin? What is the estimated demand, production, and overcapacity in that basin for the 1985, 1990, and 1995 time period?

Response

In the past, this Department and others have used the term overcapacity to describe a condition where the quantity of Federal coal reserves in existing leases, exceeded the foreseeable demand for that coal on a one ton of reserves for one ton of production basis. If the Department were to establish the objective of eliminating such "overcapacity" it would set up a serious anticompetitive situation in which coal users would have few, if any, options in selecting their coal. Moreover, this policy would assume that the Department issued leases for only that coal which will be the most efficient for users. If the coal now under lease is not the most efficient coal, users, and ultimately consumers, must pay higher prices for their energy.

Nevertheless, the term is important to the Department from the standpoint of the social and economic costs borne by those who live in the vicinity of Federal coal deposits. Since the Federal Coal Management Program was established, the Department has endeavored to work with States and local communities to ensure that the quantity of Federal coal reserves offered for sale is compatible with local development plans. Indeed, as we noted in our response to your first question, the States play an integral role in our determining how much coal should be offered for sale.

As the result of advice the Department has received from the General Accounting Office, Executive Branch agencies, and their contractors, the Department has concluded that the cost to consumers of leasing at approximately the level of coal demand far exceed the cost of leasing more than that demand. To ensure that those who live in the vicinity of Federal coal deposits will not bear a disproportionately large burden as a result of coal leasing or coal mining, the Department is confident that its Regional Coal Team mechanism will enable us to become aware of conditions in which continued leasing in particular regions would not be advisable.

The requested statistics for 1985, 1990, and 1995 follow:

POWDER RIVER BASIN

(Approved and Pending Federal Mines)

	1985 (mil-tons)	1990 (mil-tons)	1995 (mil-tons)
PRODUCTION ESTIMATES			
Approved Plans	191.2	210.7	196.6
Pending Plans	11.3	32.8	68.1
PRLA's 1/	0	0	68.7
New Leases 2/	0	0.02	0.02
TOTAL	202.5	243.52	333.42
CAPACITY			
Approved Plans	218.9	227.2	217.2
Pending Plans	11.3	32.8	68.1
PRLA's 1/	0	0	68.7
New Leases 2/	0	0.02	0.02
TOTAL	230.2	260.02	345.02
DOE PRODUCTION GOALS			
Low	187.1	205.8	259.1
Medium	193.2	294.3	490.9
High	221.6	412.2	773.8

1 - Estimated at 1 percent of recoverable reserves.

2 - Leases issued since 1976 to present; estimated at 1 percent of recoverable reserves. Production estimates and capacities were not available for pre-1976 leases not contained in approved or pending plans.

Question

16. What were the demand projections that DOI used in its decision-making process regarding the Powder River sale?

Response

The demand projections that DOI used in its decision-making process were:

1. The major projection of the demand for coal used by DOI was The 1980 Biennial Update of National and Regional Coal Production Goals for 1985, 1990 and 1995, prepared by the Department of Energy (DOE). The production goals issued by DOE were provided at three levels, low, medium, and high. Due to the uncertainties regarding coal consumption over the next fifteen years, especially for electric utilities, the range in the goals (low to high case) is substantial. The final goals for the Powder River region for 1990 range from a low of 205.8 million tons annually to 412.2 million tons at the high level. DOE noted the sensitivity of coal production in the Western Northern Great Plains (which includes the Powder River Basin) to changes in regional coal demands and regional transportation costs. DOE stated that "the Powder River Basin has a very elastic supply curve which causes production in this region to be very sensitive to demand." This means that there is a higher degree of uncertainty as far as the eventual production needed in the region is concerned. Under these conditions it is highly desirable, according to DOE, to base leasing targets on the upper end of the goals range.

2. The DOI also considered the information available concerning the demand for coal reserves in the Powder River region. A major source of information on demand for reserves is the analysis of expressions of leasing interest received in response to the call held under 43 CFR 3420.4-2. Eliminating duplicate nominations and summing, the desired tonnage indicated a demand for approximately 6.2 billion tons of recoverable reserves of Federal coal in the Powder River region.

Question

17. In the introduction to the Federal Coal Management Report for FY 1981, you state that one of the objectives of the program is to increase competition in the coal industry. How, given the lack of competition in the recent Powder River Basin sale, can any claim be made that the program succeeded in achieving this goal? What plans do you have to ensure that increased competition will exist for future coal lease sales?

Response

The competition objective expressed in the introduction to the Federal Coal Management Report for FY 1981 was to increase competition in the coal industry for coal supply contracts by expanding the amount of coal available to compete for such contracts. Such leasing tends to avoid the creation of local monopolies in coal supply and allows for entry by new firms into the coal industry. The lease sale in the Powder River Basin was in line with this competition objective, because it would increase the supply of leased coal available for coal supply contracts. It is also desirable to increase competition for Federal coal leases wherever this does not conflict with the above objective. One step taken in the Powder River sale to increase bidding competition for Federal coal leases was the planned use of intertract bidding for the tracts near Ashland, Montana. Unfortunately, three of the four Ashland tracts had to be withdrawn from the sale because surface owner consents necessary to their leasing were not filed. Intertract bidding remains an option for future sales. The Department is examining other options as well to increase bidding competition.

Question

13. I understand that the soon to be issued Federal coal leasing regulations will incorporate a provision that will provide that a Federal coal lease will no longer be considered to be a Logical Mining Unit (LMU). Previously, a Federal coal lease in an LMU would have to be mined out over a period of 40 years. The new provisions could conceivably allow the lease to be mined out over a period of 120 years. What is the economic justification for this change? How is this provision going to decrease our dependence on foreign sources of energy?

Response

Under the existing coal leasing regulations, all Federal coal leases are automatically classified as logical mining units (LMUs) with an accompanying 40-year mine-out requirement whether or not they are incorporated with other coal properties into a larger composite mining unit. The proposed regulations remove the automatic designation of a lease as an LMU.

As required by statute, the 40-year mine-out is retained in the proposed regulations. LMUs and any Federal coal leases contained within them would still be subject to the 40-year mine-out requirement. However, any Federal coal lease not included in an LMU would not be subject to the 40-year mine-out requirement. Mine-out of such leases would be controlled by the provisions of diligent development and continued operation. Although such leases could conceivably be not mined out for up to 120 years, such a time period is extremely unlikely. Most, if not all, leases would be mined out in a much shorter time frame.

From an economic standpoint, the proposed changes would not discourage the acquisition of additional Federal leases. The proposed change is desirable because it allows sudden increases in coal demand to be met promptly by the production of coal under lease. The mine plan submittal requirements insure that the licensing, permitting and mine planning activities, requiring long lead times, can be completed in time to enable orderly development of the coal when the demand occurs. If leasing is held up until demand is created, the long lead time required to plan, license, and permit leases would result in production shortfalls which would exacerbate the nation's dependence on foreign sources of energy.

Question

19. It appears that DOI's changed concept in establishing leasing targets, as based on leasing for reserves rather than leasing to meet a production goal, will result in an oversupply of recoverable reserves that will not be developed in the near term. I believe that the results of the Powder River Basin sale support this view. There was little competition and as a result, the bid per acre may well not have been as high as it might have been if 1) less of the Powder River Basin had been offered, or 2) the sale itself had been delayed until the demand for coal had started to recover. What is your response?

Response

The objective of the Department's policy of leasing to meet the demand for reserves is to provide sufficient leased coal to allow for full industry competition for coal supply contracts. In order to achieve this objective, the coal supply under lease must exceed the amount that will be dedicated to development in the near term. By no means should this be considered to be an "over supply" situation. Such a coal supply is necessary for the efficient development and for the proper pricing of the coal which is dedicated to development. Yes, the bids per acre in the Powder River Basin sale might have been higher had less coal been offered or had the sale been delayed until a later date. However, the high bids might not have been raised at all by such actions. Furthermore, the actions suggested would have conflicted with the major objective stated earlier to lease sufficient coal to allow for a competitive market for coal supply contracts. It is not Departmental policy to seek higher coal lease prices by restricting coal supply. Such is the policy of a monopolist, e.g., OPEC, in the case of oil.

Question

20. What is the distinction between a Minimum Acceptable Bid (MAB) and an entry-level bid?

Response

The term "Minimum Acceptable Bid" (MAB) is a source of confusion and has been used in different ways. It was originally used for Outer Continental Shelf lease sales and was established at $25 per acre for all tracts. Bids below this amount would not be considered. The purpose of MAB was to eliminate nuisance bids. (Bids had been received as low as 50¢ and $1 per acre.)

DOI coal regulations provide that the notice which is published in the Federal Register prior to a lease sale contain an MAB for each lease tract, but do not define what constitutes a MAB. (43 CFR 3422.2.) The regulations further provide that the high bid received for each lease tract at or above the published MAB is reviewed after the sale to determine whether it constitutes fair market value. (43 CFR 3422.3-1(5).) Thus the DOI may use the pre-sale estimate of fair market value as the MAB, an entry-level bid amount as MAB, or any other measure as MAB.

An entry-level bid is the amount at which bidding must begin if the DOI is to sell the tract. Bids below the entry level will not be considered. High bids at or above the entry level may or may not be accepted. This will be determined after the sale. (43 CFR 3422.3-1(b).)

Question 21:

Why was the concept of an "entry-level bid" used in the recent Powder River Sale rather than an MAB which has been used in previous coal-lease sales? What was the rationale for lowering the MABs prior to the Powder River Lease Sale?

Response

The Department chose to use the concept of entry-level bidding rather than pre-sale estimates of tract value as minimum acceptable bids in the Powder River sale for two principal reasons. First, the basis on which the pre-sale estimates of tract value had been determined was exceedingly weak. The data used to develop these estimates were from a two-year-old sale in the assignment market rather than in a competitive coal lease sale. In addition, the assignment sales were of leases not subject to the same statutory requirements as new leases issued today. Finally, there were serious questions about the methodology used to compare the earlier sales with the tracts to be offered for sale now. The decision to use entry-level bids was also based on the fact that it is not advisable to use a high estimate of value to initiate bidding. Well-recognized bidding theory cautions against the use of such high levels as they can substantially limit competition.

It is important to note that the purpose of the amounts published in the Federal Register notice is to discourage frivolous bidding. The purpose is not necessarily to meet the Department's statutory mandate to achieve fair market value. In the case of the Powder River sale, the Department chose to use an exceedingly rigorous post sale evaluation procedure to insure that fair market value was obtained for all of the high bids accepted.

Question

22. In the Powder River Basin Sale, the Minimum Acceptable Bids were reduced substantially for three of the most desirable tracts immediately before the sale. Provide the rationale for this reduction and the basis for arriving at the published "entry-level bids" for those tracts.

Response

See our response to Question No. 21.

Question

23. What actions did the Department of the Interior take in response to information that data relating to the Minimum-Acceptable Bids for the Powder River sale had been leaked to industry participants? Did that, in any way, compromise the Powder River sale? What action is DOI taking to ensure the fact that this situation will not take place in the future?

Response

By the time Departmental management in Washington became aware of the release of the Minerals Management Service's estimates of tract value, a determination to use entry-level bids as the minimum acceptable bids had already been made. Thus, it is our belief that the sale was not compromised.

The Department is concerned whenever any material considered confidential is made public and the Department is still attempting to determine who distributed this confidential material. Every feasible action will be taken in the future to ensure that confidential material is not released to the public.

Question

24. What is the current status with regard to Preference Right Lease Applications (PRLAs)?

Response

As of March 31, 1982, fifteen preference right leases had been issued—three in Colorado, three in Oklahoma, and nine in Utah. There were 155 preference right lease applications pending. Processing on these PRLAs is proceeding in such a manner as to meet the December 1, 1984, deadline for processing completion.

Question

25. Please define "maximum economic recovery." How is this concept used in determining whether the diligence requirements have been met by a lessee?

Response

"Maximum economic recovery" is the phrase used to describe the amount of reserves, determined by the MMS at the mine plan approval stage, that can be economically extracted over the life of the mine. MMS makes this determination based on a consideration of the likely coal market price, cost of recovery, and cost of environmental and safety requirements.

The amount of reserves that represent maximum economic recovery is used to determine how much coal the operator must extract annually to be in compliance with the diligence requirements.

Question

26. Provide a comparison of private and State coal lease offerings with the Powder River Basin Sale. The comparison should include royalty rates, diligence requirements, average cost per acre, and length of lease.

Response

Coal under private ownership normally is sold or leased through confidential negotiations although some of the terms of the sale may be made public. The Department of the Interior obtained confidential information on two 1980 private sales of coal rights to tracts in the Powder River Basin of Wyoming. The prices per recoverable ton paid for these tracts were adjusted for physical and economic factors to obtain an estimate of value for the Federal tracts being offered.

The State of Wyoming issues coal leases by application, not by competitive bidding. The term of the lease is 10 years; in the sixth year annual rentals increase from $1 to $2 per acre. In March 1982, royalty was set at 8 percent for underground mines and 12 1/2 percent for surface mines. Formerly it was 8 percent of the gross value for all coal but not less than 25¢ per ton.

The State of Montana issued one competitive lease from 1970 to April 28, 1982. The lease was issued in 1980 for a bonus of $25.05 per acre. The rental is $2 per year and the lease must be in production in the tenth year. Royalty was set at 18 percent. Advance royalties of $50,000 per year are collected in the third year.

Question

27. Provide a summary of the litigation that has ensued as a result of the Powder River Basin Coal Lease Sale.

Response

Two lawsuits have been filed as a result of the Powder River Region Coal Lease Sale:

1) Northern Cheyenne Tribe v. Watt, et al., Civil No. 82-1094 (D.D.C., filed April 20, 1982)

Plantiff challenges the Powder River Region Coal Environmental Impact Statement, arguing that it fails to analyze adequately the impacts of the lease sale on the Tribe and its Reservation. In addition, plaintiff challenges a change in policy concerning surface owner consents for the leasing of Federal coal under private surface. The district court denied plaintiff's motion for a temporary restraining order against the lease sale on April 22, 1982. The Judge stated that plaintiff was not likely to prevail on the merits and the Secretary has done all, if not more, than he could reasonably be expected to do. The Judge did indicate, however, that any leases issued as a result of the sale would be taken subject to the possible outcome of the litigation.

2) National Wildlife Federation, et al. v. Burford, et al., Civil No. 82-1166 (D.D.C., filed April 27, 1982)

Plaintiffs in this lawsuit challenge the lease sale on five grounds:

a) The bids received at the sale do not constitute fair market value and their acceptance would violate the Federal Coal Leasing Amendments Act of 1976;

b) the land use plans for the lands in the sale are inadequate for coal leasing;

c) portions of the tracts are outside the areas recommended for coal leasing in the land use plans;

d) the regulations and the land use plans fail to include a review of the lands to determine whether reclamation is technologically and economically feasible; and

e) the change in policy concerning surface owner consents violated the rulemaking provisions of the Administrative Procedure Act.

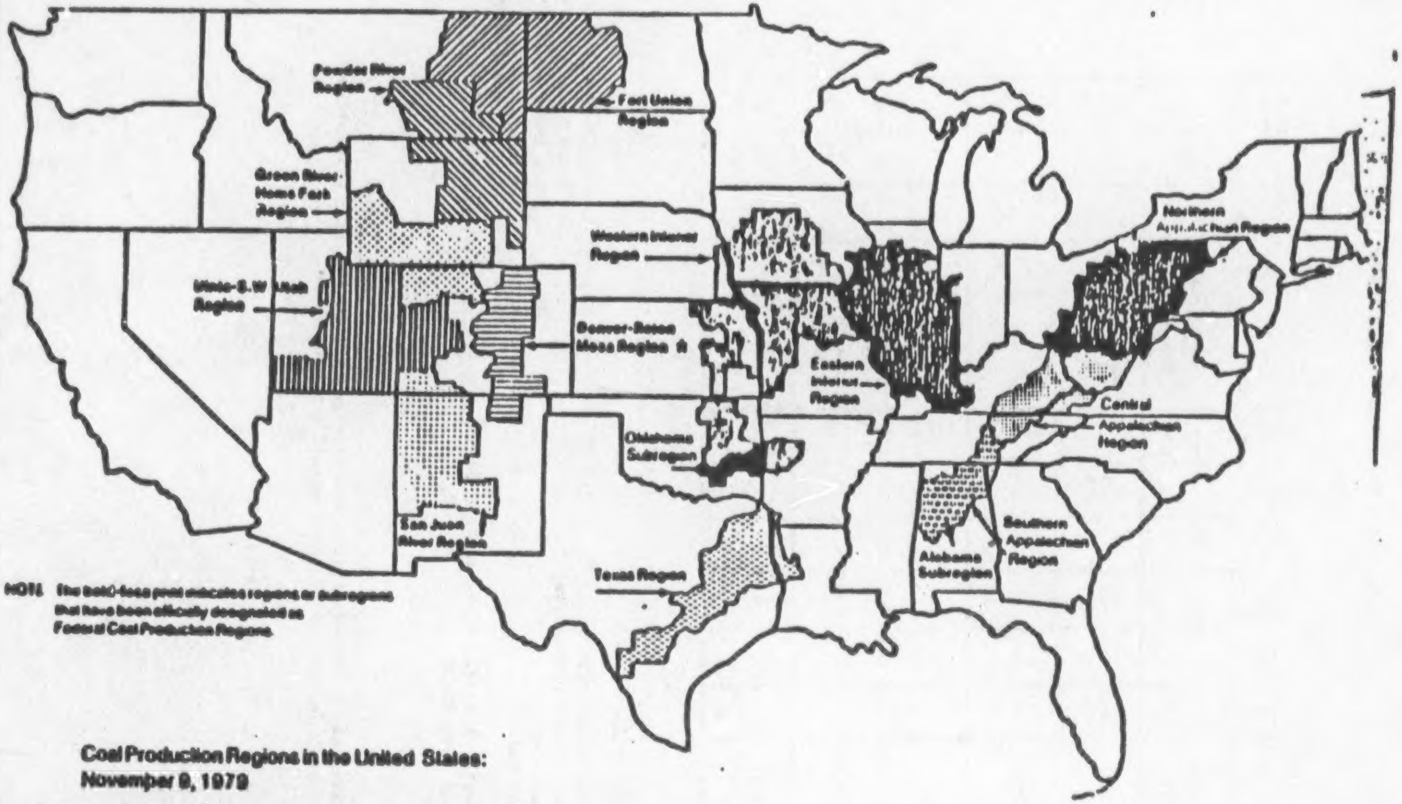
The court recently granted the Government's motion to consolidate these cases and allowed the State of Wyoming to intervene as a defendant. The court also transferred venue to the District of Montana in response to the Government's motion. Finally, in ruling on the transfer motion, the court did not rule on the Government's motion to dismiss the National Wildlife Federation's allegation concerning the unsuitability rules and reclaimability of the land.

Question

28. H.R. 5895, a bill to amend the Mineral Lands Leasing Act of 1920, proposes to make a number of substantative changes in provisions relating to diligent development of coal leases. What are the views of the Department of the Interior with regard to this proposed amendment to the MLLA?

Response

As stated by Assistant Secretary Carruthers before the House Mines and Mining Subcommittee on June 10, we have initiated a review of the likely economic impacts and other effects of the changes proposed by H.R. 5895. We will be in a position to report to the Congress on this diligence issue soon. (See attached copy of testimony, attachment 3).


Powder River Region
Fort Union Region
Green River-Hams Fork Region
Western Interior Region
Uinta-S.W. Utah Region
Denver-Raton Mesa Region *
Eastern Interior Region
Northern Appalachian Region
Central Appalachian Region
Oklahoma Subregion
San Juan River Region
Texas Region
Alabama Subregion
Southern Appalachian Region

NOTE: The bold-face print indicates regions or subregions that have been officially designated as Federal Coal Production Regions.

Coal Production Regions in the United States:
November 9, 1979

*Deactivated as Federal Coal Production Region by *Federal Register* notice on April 2, 1982.

REGIONAL COAL LEASE SALE SCHEDULE

	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
FY 1981				GR #1a			GR #1b		APP #1a	UI #1a		
FY 1982	GR #1c		APP #1b		UI #1b		PR #1					
FY 1983									FU #1			SJR #1
FY 1984					UI #2	GR #2	APP #2		PR #2			
FY 1985											GR #3	FU #2
FY 1986			UI #3							PR #3	SJR #2	

Federal Coal Regions

GR - Green River-Hams Fork
UI - Uinta-Southwestern Utah
PR - Powder River
FU - Fort Union

APP - Southern Appalachian, Alabama Subregion
SJR - San Juan River

Lease Sale

1 or 1a - Initial first round lease sale
1b, 1c - First round follow-u sales
2 - Initial second round sale
3 - Initial third round sale

Note: The sale schedules during calendar years 1985 and 1986 have not been firmly designated in these specific months.

ATTACHMENT 2

JUN 10 1982

STATEMENT OF GARREY E. CARRUTHERS, ASSISTANT SECRETARY, LAND AND WATER RESOURCES, BEFORE THE MINES AND MINING SUBCOMMITTEE, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, U.S. HOUSE OF REPRESENTATIVES, ON H.R. 5895, A BILL TO AMEND THE MINERAL LEASING ACT OF 1920, AND FOR OTHER PURPOSES.

I appreciate the opportunity to be here today to discuss amendment of several provisions of the Mineral Leasing Act relating specifically to coal.

The Administration places a high priority on the development and use of coal in meeting the energy needs of the country. We agree with the sponsors of the bill that some of the provisions of the Mineral Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act of 1976, do not allow sufficient flexibility to accommodate realistic coal development timeframes.

In effect, these provisions serve to discourage, rather than encourage, coal production. With this in mind, the Department has been studying the coal provisions of the Mineral Leasing Act with a view to making recommendations for its amendment. Our objective, of course, is a law which provides for orderly and efficient development of the coal resource, recognizing both regulatory and technological constraints.

H.R. 5895 addresses some of the issues in which we have a keen interest and which we have been studying in considering whether general amendments to the Leasing Act are warranted. I will discuss the Administration's views of each of its provisions.

Section 2 of H.R. 5895 would delete from the law the provision that prohibits anyone who has held a nonproducing Federal coal lease for 10 years from acquiring a lease or leases under the terms of the Mineral Leasing Act.

ATTACHMENT 3

For leases issued before the Federal Coal Leasing Amendments Act, the ten-year clock started on August 4, 1976.

Companies are faced with the unprecedented and unnecessary choice of relinquishing old Interior leases in order to bid on new ones, or of holding old leases and being disqualified from bidding on new ones. Those who choose to hold valuable but nonproducing leases cannot bid for new leases, thus removing competitors from new lease sales. The 10-year requirement is unworkable under the proposed diligence rules issued originally by the Department of Energy and now by the Department of the Interior. These rules, as proposed, would give the holders of older leases until 10 years after the next readjustment of their lease terms to initiate production.

Thus a lease issued in 1960, and readjusted in 1980, would require production by 1990. Under current law, between 1986 and 1990 the holder of this nonproducing lease, although in full compliance with his lease obligations would be disqualified from bidding for new leases even if they adjoined the existing lease and were an important part of the mining unit. Furthermore, synfuels projects to which Federal coal is committed but which will not be producing in 1986 may collapse if the coal companies must withdraw from the projects to avoid the prohibition against acquiring new leases.

Finally, one interpretation of the prohibition against being issued "a lease or leases under the terms of this Act" is that it applies to oil and gas and other Mineral Leasing Act leases as well as coal, so that an oil company whose coal subsidiary was not producing from its Federal coal lease could not be issued new oil and gas leases. We believe that these effects are undesirable and strongly favor deleting this provision from the law.

Section 3 of H.R. 5895 would eliminate the requirement that all lands in a logical mining unit shall be contiguous. We support deleting this requirement. The contiguity requirement ignores the geological realities of coal deposits and is unnecessary to serve the purposes of logical mining unit formation — that the lands will be mined as a single unit by a single operator.

We believe that the problem of combining tracts separated by barriers such as rights-of-way and the like can in many cases be resolved by regulations redefining contiguity in terms of legal subdivisions, such as the Department of the Interior proposed last December, but there is no strong reason to keep the requirement in the law. Accordingly, it is appropriate to delete this unnecessary statutory provision.

Section 4 of H.R. 5895 would delete the requirement in the present law that all reserves in the entire logical mining unit shall be mined within 40 years. We agree that the 40-year requirement should be deleted. The incentive to form a logical mining unit is seriously compromised by the present requirement. Forty-year mineout means an average production rate of 2-1/2 percent a year. At the same time, however, "continued operation" on an individual lease has been, and by the Administration's December 1981 rule proposal would continue to be, only one percent of lease reserves a year. The two requirements are inconsistent and mean a lessee's obligations are, for no apparent reason, made tougher if he seeks to form a logical mining unit.

Furthermore, the 40-year requirement does not on its face take into account the years in which advance royalties are paid in lieu of continued operation of the leases in a logical mining unit. This provision is especially onerous for steel industry lessees holding metallurgical reserves, because they need long-term commitments of reserves and also need to be able to vary their use of coal from individual mines, depending on the type of steel being produced.

Section 7 of the Mineral Leasing Act, as amended by the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. §207), contains provisions which are both inconsistent and inflexible. For instance, the 1976 amendments declare that a coal lease term is for 20 years and so long thereafter as coal is produced, and that a coal lease terminates in 10 years if coal is not produced in commercial quantities. The 1976 amendments also allow an operator to pay advance royalties for a maximum of 10 years over the life of a lease, but inconsistently appear to state that production is required in every year after the 20th year in order to maintain the lease, even though the operator still has several years remaining in which he could pay advance royalties in lieu of production.

Section 5 of H.R. 5895 would amend this section to allow continuation of a lease upon the payment of advance royalties in lieu of any production obligation, whether it was "diligent development" or "continued operation" under the Department's rules. It would require the Secretary to suspend the condition of continued operation upon payment of advance royalties unless he determines that the public interest will not be served thereby.

The present law gives the Secretary discretion to suspend continued operation if he finds public interest will be served thereby.

H.R. 5895 would set as the advance royalty one percent of the recoverable lease reserves, in place of the present provision. This allows the Secretary to determine the advance royalty on the basis of a fixed reserve-to-production ratio.

Section 5(c) of H.R. 5895 would delete the sentence from 30 USC §207(b) which provides that nothing in that section relating to advance royalties shall be construed to affect the requirement in section 207(a) relating to commencement of production at the end of 10 years. The bill does not make clear whether the advance royalty provision can or cannot be used to extend a lease beyond 20 years. H.R. 5895 seems to imply that it can; however, it does not expressly treat this uncertainty in the existing section 7(a).

Subsections 5(d) and (e) of the bill simply conform other existing provisions to the primary change in the bill — that production is not required by the tenth year. The bill would allow advance royalties to be paid, upon Secretarial approval, in lieu of any production obligation under the lease, not just in lieu of continued operation.

We have problems with the current diligence requirements. However, we also have problems with the proposed amendments and have initiated a review of the likely economic impacts and other effects of the proposed changes. We will be in a position to report back to the Congress on this diligence issue soon.

Section 3(f) would delete the time requirement — 3 years — within which a lessee shall submit a "resource recovery and reclamation plan" to the Secretary for approval. We concur with this amendment. Interior's proposed regulations have severed this 1976 requirement from the reclamation permit application required under Surface Mining Control and Reclamation Act of 1977. Experience has shown it to be very difficult for an operator to do all the work necessary for permitting a new mine (hydrology studies and the like) and to file a complete SMCRA plan within three years.

In other words, Interior proposed that operators file within 3 years a plan for the life of the mine showing only how they will comply with the diligence and coal resource conservation obligations of their lease, but not treating compliance with SMCRA on reclamation. No longer would a complete SMCRA plan and a 5-year permit application have to be filed in 3 years, under the proposal. This change would not alter the requirement that lessees file and have the Secretary approve a plan showing compliance with the Leasing Act's diligence and resource conservation requirements and the SMCRA reclamation requirements, before mining may begin. Under these circumstances, the statutory time limit has no real meaning.

Finally, section 3(g) of H.R. 5895 would add a new subsection to the law that would exempt coking coal from the requirements for diligent development and continued operations, leaving it subject only to the 20-year and commercial quantities requirements. While we agree with the objective of this provision, we oppose this approach because it is complicated to administer a provision based on the end use of a product. In addition, much coal that can be blended for coking can be used as steam coal.

We also point out that H.R. 5895 does not say how or whether it will apply to existing leases. This is an important issue which is left unresolved by the bill. There are several alternatives. The bill could say that it applies prospectively only; or it could apply to all leases but give the lessee the option to stay under its present lease; or it could apply to all leases issued prior to enactment of H.R. 5895, whether or not they have been readjusted under the Federal Coal Leasing Amendments Act of 1976.

Our recommendation is that the law should clearly spell this out. Subject to our earlier statement that we cannot take a position at this time on diligence, we believe section 7 of the Leasing Act — however it is revised — should become applicable to all leases issued or readjusted after August 4, 1976.

The Department will continue to review the diligent development issue, as well as a variety of other technical changes to the Mineral Leasing Act, in conjunction with Members of the House and Senate, and their staffs. We hope changes like those proposed here can help reduce unnecessary or burdensome provisions, without sacrificing the benefits that result from the 1976 Coal Amendments and other leasing laws.

We would be pleased to work with you and your staff in further developing appropriate amendments.

This concludes my statement. I will be pleased to answer questions.

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 14 1982

Honorable Dale Bumpers
United States Senate
Washington, D.C. 20510

Dear Senator Bumpers:

This will respond to your May 18 inquiry regarding the Powder River Basin federal coal lease sale held in Cheyenne, Wyoming, on April 28.

The enclosed document provides answers to your questions 1 through 13.

Sincerely,

Donald Paul Hodel

UNDER SECRETARY

Enclosure

1. What was the basis for offering an additional 1.6 billion tons of federal coal for lease in the Powder River Basin, when 9 billion tons of coal have already been leased in the area?

Response: Expressions of leasing interest (nominations), while perhaps an inflated indicator of demand, totalled 6.2 billion tons—several times the offered tonnage. The 1.6 billion tons of coal the Secretary chose to offer for sale in Powder River had been recommended by the Regional Coal Team for that region as their preferred alternative in the Environmental Impact Statement. Moreover, the amount of coal offered for sale was approved by the Governors of Wyoming and Montana. Because of the basic relationship between price and supply, had a smaller amount of coal been offered for sale it is conceivable that the bonus bids received would have been greater. Just as in the case of OPEC which limits the quantity of oil offered for sale on the world market, the Department could have limited the amount of coal offered for sale and thereby possibly achieved higher prices in the form of bonus bids. However, such higher prices would be inconsistent with the recommendations of four other Federal agencies, Departmental policy, and the interests of consumers.

The major projection of the demand for coal used by DOI was The 1980 Biennial Update of National and Regional Coal Production Goals for 1985, 1990 and 1995, prepared by the Department of Energy (DOE). The production goals issued by DOE were provided at three levels, low, medium, and high. Due to the uncertainties regarding coal consumption over the next fifteen years, especially for electric utilities, the range in the goals (low to high case) is substantial. The final goals for the Powder River region for 1990 range from a low of 205.8 million tons annually to 412.2 million tons at the high level. DOE noted the sensitivity of coal production in the Western Northern Great Plains (which includes the Powder River Basin) to changes in regional coal demands and regional transportation costs. DOE stated that "the Powder River Basin has a very elastic supply curve which causes production in this region to be very sensitive to demand." This means that there is a higher degree of uncertainty as far as the eventual production needed in the region is concerned. Under these conditions it is highly desirable, according to DOE, to base leasing targets on the upper end of the goals range.

The DOI also considered the information available concerning the demand for coal reserves in the Powder River region. A major source of information on demand for reserves is the analysis of expressions of leasing interest received in response to the call held under 43 CFR 3420.4-2. Eliminating duplicate nominations and summing, the desired tonnage indicated a demand for approximately 6.2 billion tons of recoverable reserves of Federal coal in the Powder River region.

2. The assessment of federal coal leases recently released by the Office of Technology Assessment concluded that there is at least the potential for continued high overcapacity of leased coal in the Powder River Basin. This calculation did not include the additional coal sold on April 18. Does the Department of the Interior have data that refutes this conclusion?

Response: A recent review has been performed by MMS for approved and pending Federal coal mines (i.e., mines containing Federal or Federal and non-Federal coal), preference right lease applications, leases issued since 1976, and tracts put up for sale on April 28, 1982. Based on the uncertainty of future market demands, it is difficult to precisely evaluate the over or undercapacity of the Powder River Basin. Based on the review of the planned and estimated capacity of the Powder River Basin in comparison with the Department of Energy production goals, it is likely that an undercapacity will develop rather than the overcapacity as indicated by the Office of Technology Assessment.

The methodology used by the Office of Technology Assessment (OTA) does not sustain their conclusion that an "overcapacity" of Federal coal currently exists in the Powder River Basin. The OTA study did not use data to indicate the price at which leased Federal coal reserves could be produced. As such, there is no basis for conclusion that coal now under lease could be produced in the foreseeable future given reasonable assumptions about future market prices. In other words, although it is true that Federal coal reserves are now available in the Powder River Basin which do not have either transportation or environmental constraints, it is not clear that these reserves could be produced without a substantial increase in coal prices—an increase that would have to be borne by the coal user and, ultimately, the consumer. If the Federal Government is to ensure that coal users and ultimately, consumers, pay the lowest possible price for their energy needs, it is essential that the coal which will provide them with their most efficient supply be available, i.e., under lease. It is also essential that there be a number of producers which have access to reserves meeting the needs of future users so that there is adequate competition in the market for coal supply contracts. Without such competition, the producers who do have access to Federal reserves would be able to increase their prices and thus capture excess profits resulting from the "scarcity" of coal to meet the needs of particular users.

While the Department chose not to rely upon the conclusions of the OTA for the reasons described above, it did rely upon analyses conducted by the General Accounting Office, Council on Wage and Price Stability, Department of Energy, Department of Justice, and private consulting firms employed by these agencies. Without exception, the analysis performed by and for these agencies concludes that the public suffers a greater loss from leasing less coal than the market for reserves demands, than by leasing as much as or more coal than the market for reserves demands. Consequently, the Department was not acting against sound analytical advice when it chose to conduct the Powder River sale. Moreover, the amount of coal offered for sale in the Powder River Basin had been approved not only by the Department's Regional Coal Team but also by the Governors of Wyoming and Montana.

3. Does the Department feel that the results of the Powder River Basin sale indicate that the demand for the coal justified such a large sale?

Response: Yes.

4. How do the bids received for the Powder River Basin tracts compare with prices paid for comparable non-federal coal reserves in the area?

Response: Coal under private ownership normally is sold or leased through confidential negotiations although some of the terms of the sale may be made public. The Department of the Interior obtained confidential information on two

1980 private sales of coal rights to tracts in the Powder River Basin ofWyoming. The prices per recoverable ton paid for these tracts were adjusted for physical and economic factors to obtain an estimate of value for the Federal tracts being offered.

The State of Wyoming issues coal leases by application, not by competitive bidding. The term of the lease is 10 years; in the sixth year annual rentals increase from $1 to $2 per acre. In March 1982 royalty was set at 8 percent for underground mines and 12 1/2 percent for surface mines. Formerly, it was 8 percent of the gross value for all coal but not less than 25 cents per ton.

The State of Montana issued one competitive lease from 1970 to April 28, 1982. The lease was issued in 1980 for a bonus of $25.05 per acre. The rental is $2 per year and the lease must be in production in the tenth year. Royalty was set at 18 percent. Advance royalties of $50,000 per year are collected in the third year.

5. Does the Department plan to accept all of the bids offered for the tracts that received bids?

Response: The Department has accepted the high bids for nine of the 11 tracts because those bids meet the bid acceptance criteria of the postsale evaluation procedures adopted for the Powder River coal lease sale on April 27, 1982. The bid for one tract, the Rocky Butte tract, was rejected because it did not meet these criteria. The qualifications of the high bidder for the 11th tract, the Coal Creek tract, which is a small business set-aside tract, are under review by the Small Business Administration (SBA). A decision on whether to accept or reject the bid for this tract will not be made until the SBA has completed its review and provided its determination to the Department.

6. Prior to the Powder River Basin sale, how did the Department determine fair market value for Federal coal tracts? Please describe the sale procedures used in previous sales.

Response: We have in the past used a computer to generate a discounted cash flow (DCF) analysis indicating the "value" of a tract of coal. The DCF or income approach is well recognized as a method of evaluation. It can be a useful tool, but its reliability or accuracy is not good in predicting fair market value (FMV) of mineral leases unless it is used in conjunction with an evaluation of the results of sales. This is true because small changes in the estimation of either the selling price of coal or the mining costs, or other factors such as the discount rate or mine production schedule, have a major effect on the estimated tract value. Comparable sales analysis have also been used to estimate fair market value where sufficient market data are available.

The previous sales procedures were that an evaluation by the above methods was prepared prior to the sale and the results of that evaluation were published in the Federal Register Notice of Sale as the minimum acceptable bid, which was considered to be the Department's presale estimate of fair market value. However, it was and is never explicitly stated that the highest bid meeting or exceeding the minimum acceptable bid, all else being acceptable, would be the successful bid and would win the lease. A postsale review of the high bid is always conducted before it is accepted and a lease issued to the high bidder. The Department reserves the right to reject a high bid that meets or exceeds the minimum acceptable bid if information obtained after the minimum acceptable bid is set indicates that the fair market value of the tract is higher than previously estimated and the high bid fails to meet or exceed the adjusted fair market value estimate.

These standard Departmental sale procedures are still in effect. The experimental sale procedure used for the Powder River coal lease sales differ from the standard procedure in two ways: (1) the minimum or "entry level" bids established for the Powder River lease tracts were not based on detailed presale economic evaluations but were set as floor values to discourage nuisance bidding; a postsale evaluation was conducted to determine if the high bids constitute fair market value, and (2) the tracts were categorized so that a bidder submitting a qualifying sealed bid for one tract in a category was eligible to bid orally on all tracts in that category or in any lower category whether or not that bidder submitted sealed bids for the other tracts.

7. How is fair market value being determined for the Powder River Basin tracts? How does this differ from the former procedure?

Response: See our response to Question No. 6.

8. Why did the Department of the Interior decide to abandon its usual method of determining fair market value and setting minimum acceptable bids before the sale, instead set "entry level bids" and determine fair market value of the bids after the sale?

Response: The term "Minimum Acceptable Bid" (MAB) is a source of confusion and has been used in different ways. It was originally used for Outer Continental Shelf lease sales and was established at $25 per acre for all tracts. Bids below this amount would not be considered. The purpose of MAB was to eliminate nuisance bids. (Bids had been received as low as 50¢ and $1 per acre.)

DOI coal regulations provide that the notice which is published in the Federal Register prior to a lease sale contain an MAB for each lease tract, but do not define what constitutes a MAB. (43 CFR 3422.2.) The regulations further provide that the high bid received for each lease tract at or above the published MAB is reviewed after the sale to determine whether it constitutes fair market value. (43 CFR 3422.3-1(5).) Thus the DOI may use the presale estimate of fair market value as the MAB, an entry-level bid amount as MAB, or any other measure as MAB.

An entry level bid is the amount at which bidding must begin if the DOI is to sell the tract. Bids below the entry level will not be considered. High bids at or above the entry level may or may not be accepted. This will be determined after the sale. (43 CFR 3422.3-1(b).)

The Department chose to use the concept of entry-level bidding rather than pre-sale estimates of tract value as minimum acceptable bids in the Powder River sale for two principal reasons. First, the basis on which the pre-sale estimates of tract value had been determined was exceedingly weak. The data used to develop these estimates were from a two-year-old sale in the assignment market rather than in a competitive coal lease sale. In addition, the assignment sales were of leases not subject to the same statutory requirements as new leases issued today. Finally, there were serious questions about the methodology used to compare the earlier sales with the tracts to be offered for sale now. The decision to use entry-level bids was also based on the fact that it is not advisable to use a high estimate of value to initiate bidding. Well-recognized bidding theory cautions against the use of such high levels as they can substantially limit competition.

It is important to note that the purpose of the amounts published in the Federal Register notice is to discourage frivolous bidding. The purpose is not necessarily to meet the Department's statutory mandate to achieve fair market value. In the case of the Powder River sale, the Department chose to use an exceedingly rigorous post sale evaluation procedure to insure that fair market value was obtained for all of the high bids accepted.

9. Why did the Department decide to change its usual sale procedures just before the largest federal coal sale in history?

Response: See our response to Question No. 8.

10. How were the "entry level bids" for the Powder River Basin tracts established?

Response: The entry-level bids were based on presale estimates (unadjusted) of the value per ton of the recoverable coal. These presale estimates were obtained by comparable sales analysis with private sales of Powder River Basin coal lands completed in 1980. Since that date, changes in the expected price of oil, high interest rates, and general economic conditions resulted in generally lower values for coal and oil and gas lands. The presale estimates were unadjusted for this 2-year time factor. Such adjustments are judgmental and it was thought that a better adjustment for time could be made after the sale.

It was deemed appropriate to establish entry level bids below the presale unadjusted estimate of value so that the entry level would not be above a reasonable bid, thereby not excluding potential buyers. The entry level bids should be sufficiently high to eliminate token or nuisance bids. In establishing the respective entry level bids, the thirteen tracts were divided into four categories, ranked according to value. These four categories were assessed entry level bids of 8 cents per ton, 5 cents per ton, 2½ cents per ton, and $25 per acre in descending order of value. For purposes of establishing uniform entry level sealed bids expressed in dollars per acre, the cents per ton of recoverable coal were thus converted to dollars per acre.

11. According to recent reports in Inside Energy and the Washington Post, the Department's original estimates of minimum acceptable bids were seen by industry and state representatives before the sale notice, and these minimum bids were then

discarded in favor of entry level bids set at a lower amount. Does the Department have an informal practice of soliciting comments on the minimum acceptable bids from industry prior to sales?

Response: No.

12. Did comments from industry or other parties influence the Department's decision to publish the lower entry level bids instead of following the usual coal sale procedures?

Response: No.

13. In a March 16, 1982, memorandum to the Interior Department's Deputy Chief for Onshore Minerals Management, Dwayne E. Hull, Minerals Manager for the North Central Region, states:

> "It has been confirmed...that our (minimum acceptable bid) values have been distributed by unknown parties...and are in the hands of some industry, state and private individuals...our fear is, the sale procedures may be compromised."

What action did the Interior Department take after learning that this confidential information may have been distributed before the sale?

Response: After receiving the Dwayne Hull memorandum of March 26 (not March 16), MMS management notified the Department of Hull's concerns. MMS managers advised the Department, however, that Hull's concerns about the possible effects of "leaks" of pre-sale value estimates were unfounded because the decision had already been made to change procedures which would insure receipt of fair market value. Prior to the Powder River Basin sale, entry level bid categories were published by the Bureau of Land Management in the Federal Register and were available to all interested parties and a postsale analysis was performed to determine if FMV was met. For the Powder River Basin sale, these new procedures were established as explained in detail in answer to your question No. 6. Because of the new procedures (not known by the Minerals Manager) the concern about the sale being compromised was unwarranted. Unauthorized release of priviledged, confidential, or proprietary data, we believe, is a serious matter deserving prompt investigation. When knowledge of the "leak" became known to Departmental officials in early April, MMS in Reston was directed to initiate an investigation to consist of interviews with employees who had access to the data. That investigation is continuing.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 1 - 1982

Honorable Edward J. Markey
House of Representatives
Washington, D.C. 20515

Dear Mr. Markey:

This responds to your letter of May 24 regarding the Powder River coal lease sale held in Cheyenne, Wyoming, on April 28.

The Department has accepted the high bids for nine of the 11 tracts because those bids meet the bid acceptance criteria of the post sale evaluation procedures adopted for the Powder River coal lease sale on April 27, 1982. The bid for one tract, the Rocky Butte tract, was rejected because it did not meet these criteria. The qualifications of the high bidder for the 11th tract, the Coal Creek tract, which is a small business set-aside tract, are under review by the Small Business Administration (SBA). A decision on whether to accept or reject the bid for this tract will not be made until the SBA has completed its review and provided its determination to the Department.

The questions posed in your letter concern primarily the issue of whether the Department received fair market value for the coal, as is required by the Federal Coal Leasing Amendments Act of 1975. Before addressing your questions, we should review generally the issue of fair market value. Fair market value is a legal term applied to conditions in which a willing buyer and a willing seller, neither of whom are under duress, agree upon a price for a specific commodity offered for sale. The Department has made a practice of using one of two methods to estimate the value of coal properties before they are offered for sale. In assessing the value of the Powder River tracts, the Minerals Management Service (MMS) used the so-called "comparable sales approach," which involves comparing recent sales of similar tracts with those to be offered.

The Department chose to use the concept of entry-level bidding rather than presale estimates of tract value as minimum acceptable bids in the Powder River sale for two principal reasons. First, the basis on which the presale estimates of tract value had been determined was exceedingly weak. The data used to develop these estimates were from a two-year-old sale in the assignment market rather than in a competitive coal lease sale. In addition, the assignment sales were of leases not subject to the same statutory requirements as new leases issued today. Finally, there were serious questions about the methodology used to compare the earlier sales with the tracts to be offered for sale now. The decision to use entry-level bids was also based on the fact that it is not advisable to use a high estimate of value to initiate bidding. Well-recognized bidding theory cautions against the use of such high levels as they can substantially limit competition.

In light of the reasons why the Department questioned MMS's presale evaluation, it is interesting to note that all of the high bids accepted in the Powder River Sale met or exceeded MMS's original presale estimate of the value, except one. In the case of the exception, the Department chose to accept the high bid for the tract known as "Little Rawhide Creek" because it was deemed to be a "maintenance tract" and, therefore, is most suited to an existing mining operation rather than a new, competitive mining unit.

A second important point concerning fair market value is its relationship to the amount of coal offered for sale. It is the policy of the Department to insure that a sufficient quantity of coal is available to producers to ensure competition in the market for coal supply contracts. Since 1979, the General Accounting Office, Council on Wage and Price Stability, Department of Energy, and Department of Justice, as well as private consultants working for these agencies, have vociferously argued for this policy based on their concern that a restrictive leasing policy would have the effect of increasing coal prices to consumers. Their reasoning contains two key elements. First, coal is not a homogeneous commodity and, therefore, if consumers are to pay the least possible price for their energy, it is essential that the most efficient coal for each user is available, i.e., under lease. Second, to insure adequate competition, there must be a sufficient number of producers to meet the needs of each individual coal user. If the Department restricts the quantity of coal offered, higher prices could possibly be obtained because the Federal Government has the ability to act as a monopolist in the market for coal reserves; the Federal Government owns approximately 60% of western coal and controls an additional 20%. A policy of restricting supply would, however, be the same strategy that OPEC nations follow in sustaining high oil prices. Such a policy of maximizing the return to the Government in the form of bonus bids by restricting the quantity of coal offered for sale would not be in the public interest.

In discussing the amount of coal offered in the Powder River sale, we should also note that the Department chose its leasing level only after detailed consultation with the two States involved. The amount of coal offered had been recommended by the Department's Regional Coal Team for that area, and the Governors of Wyoming and Montana concurred in this recommendation.

It is important to note that the purpose of the amounts published in the Federal Register notice is to discourage frivolous bidding. The purpose is not necessarily to meet the Department's statutory mandate to achieve fair market value. In the case of the Powder River sale, the Department chose to use a rigorous post sale evaluation procedure to insure that fair market value was obtained for all of the high bids accepted.

The entry-level bids were determined jointly by professionals from the Minerals Management Service and the Bureau of Land Management.

Enclosed for your information is a copy of a memorandum signed by myself and the Acting Director of the Minerals Management Service dated April 27, 1982, regarding proposed post sale evaluation procedures for the Powder River coal lease sale.

Sincerely,

Donald Paul Hodel

UNDER SECRETARY

Enclosure

United States Department of the Interior
MINERALS MANAGEMENT SERVICE
RESTON, VA. 22091

Memorandum

To: Chairman, Minerals Management Board

Through: Assistant Secretary--Energy and Minerals

From: Acting Director, Minerals Management Service

Subject: Proposed Postsale Evaluation Procedures for the Powder River Coal Lease Sale

Attached is a proposal for the use of postsale evaluation procedures in the Powder River Coal Lease Sale of April 28, 1982. The procedures as outlined are intended to encourage and assist in the development of economically sound coal resources by streamlining and strengthening coal fair market value determinations. Their use in the April 28, 1982, sale is intended as an experiment in postsale evaluations. If there is merit in their use, as indicated by the results of this sale, we will propose that they be adopted as permanent procedures for future coal lease sales.

With your concurrence, we will direct that the procedures be used in the upcoming Powder River Coal Lease Sale.

William P. Pendley

Attachment

I concur:

Donald Paul Hodel
Chairman, Minerals Management Board

APR 27 1982
Date

Minerals Management Service
Branch of Economic Evaluation
April 23, 1982

Executive Summary

History

The history of fair market value (FMV) for Federal coal resources is based on a series of laws, judicial decisions, and policy statements. Prior to 1970, Interior paid little attention to setting minimum bonus bid requirements for coal leases, and many leases were issued noncompetitively. Leases were available almost for the asking; the cost of holding most leases amounted to an annual rental fee of $0.25 which escalated to $1.00 per acre in 5 years. It was generally felt that royalty collection provided fair return to the Government.

Significant acreages of coal were leased during the period 1965 through 1967 even though production from Federal leases declined during the same period. For this reason and because the great majority of leases were being purchased by coal brokers instead of coal producers, an informal but total coal leasing moratorium was imposed in 1971.

In October 1972, Secretarial Order No. 2948, signed by Secretary Morton, stated that FMV should be received for onshore minerals. On February 17, 1973, the Secretary announced a new coal leasing policy designed to allow leasing to meet certain short-term needs only. Passage of the Federal Coal Leasing Amendments Act in 1976, mandated that FMV be returned for resources leased. Secretary Andrus in June 1979, convened a Federal FMV task force, and as a result on May 28, 1980, a Secretarial Issue Document was signed which dealt with the definition of FMV and minimum acceptable bid (MAB) determinations.

Present Minerals Management Service Procedures

Present Minerals Management Service (MMS) procedures have been guided by policies set forth in the May 28, 1980, decision which established a definition of FMV and definitions of evaluation procedures for both large and small tracts. An Oversight Group was formed by the Secretary to administer the implementation of these policy decisions.

Coal resource data acquisition, tract delineation, and determinations of tract type are made before specific tract evaluation can begin. The current MMS policy preference is to use comparable sales methodology whenever possible. Comparable sales methodology has been hampered in the past by the limited amount of market data available, especially for western coal. Therefore, MMS continues to rely heavily on discounted cash flow (DCF) analysis.

Current procedures call for FMV estimates resulting in MABs to be published prior to the sale date. After the sale, MMS and the Bureau of Land Management meet briefly to review bidding and ensure that FMV has been achieved.

Problems

DCF analyses on coal lease tracts occasionally indicate no value or a negative cash flow on leases that have brought substantial bonus bids in the actual sales. Conversely, published minimum bids levels, determined either by DCF or comparable sales analysis, occassionally may have been too high resulting in no bids being received on some tracts. This difference between FMV estimate of the bonus and high bid has led to concerns by the public and industry that the Department is unable to accurately estimate FMV for coal resources. It should be noted that the bonus is only a fraction of the fair return to the Government for the coal resource.

Several concerns are apparent in current FMV procedures for Federal coal resources: acquisition of sufficient data for either comparable sales or DCF tract evaluations; variability of comparable sales data due to the time differential of sales; sensitivity and labor intensiveness of DCF tract evaluations; and increasing indications from the market that past policies, particularly those adopted in May of 1980, may need to be revised in order to promote the timely exploration and development of publicly owned coal resources.

Proposed Streamlined Procedures

Procedures to streamline fair market estimates of bonus for Federal coal resources are proposed here which will both ensure receipt of FMV and consider the current coal market. Under the proposal the Department would utilize both presale and postsale procedures would be used. Minimum entry bids would be published prior to the sale; these values do not represent FMV for a given tract but establish the level at which bidders qualify for the auction. After potential buyers have bid, the decision whether or not to lease the tract will be based on a review of all bidding at the sale in addition to presale indications of lease value.

Introduction

The history of fair market value (FMV) and economic evaluation of Federal coal resources for lease sales is based on a series of laws, judicial decisions, policy statements, documented procedures, and task force reports. Prior to 1970, Interior paid little attention to setting values for coal leases. The basic policy required that the Federal Government receive a fair return through royalty collection.

Large acreages were leased in the late 1960's and early 1970's due to changes in leasing regulations. Declining markets resulted in production decreases from Federal leases during this same period. Because of this trend and the desire to prevent what appeared to be speculative purchasing of Federal coal, the Secretary imposed a coal leasing moratorium in 1971. From May 1971 until February 1973, no additional coal leases were issued.

On February 17, 1973, the Secretary announced a new coal policy which allowed new leasing while mandating FMV return for coal leases. Various approaches were tried to insure compliance with the FMV mandate. In 1975, the General Accounting Office put out a report titled "Role of Federal Coal Resources in Meeting National Energy Goals Needs to be Determined and the Leasing Process Improved" which among other criticisms pointed out the inconsistencies in the way the Department had assured FMV. In August 1977, the Department's coal leasing program was stopped, this time by the NRDC vs. Hughes suit. Because of those and other factors, there was a perception of a need for clarification of the national coal leasing policy. To that end, Congress passed the Federal Coal Leasing Amendments Act in 1976, which mandated FMV be returned for coal resources leased.

As part of a plan to restart the Department's coal leasing program and because of confusion over the definition of FMV, the Secretary in June, 1979, convened a Federal FMV task force, and as a result on May 28, 1980, a Secretarial Issue Document (SID) was signed. Present Minerals Management Service (MMS) procedures are based on policies set forth in this SID. It established the Department's position on FMV and the evaluation philosophy for two major tract types (large and small). An Oversight Group was directed by the Secretary to administer the implementation of these policy decisions.

Current MMS Procedures

Current MMS procedures are based on policy guidance given by the SID of May 28, 1980, concerning FMV determinations applied to leasing of Federal coal lands. The major decision required that "the preferred approach to obtain fair market value for Federal coal leases should steer a course midway between seeking to maximize capture of economic rent and satisfying the minimum legal obligations."

MMS policy is to use the comparable sales approach when possible. During the past decade, few Federal leases were sold or issued and MMS has had little data available from private transactions for comparative sales analysis. This is particularly true for western coal lands. MMS, therefore, has had to rely heavily, and at times solely, on discounted cash flow (DCF) analysis of specific tracts. As coal leasing has gotten underway, more sales data have become available. Use of the comparable sales methodology has increased, although DCF analysis has still been necessary in certain evaluations.

The current steps leading to the sale of coal lands are outlined below. Coal lease sale scheduling is done on the basis of industry expressions of interest and the land use planning schedules of the surface management agencies (i.e., BLM, Forest Service).

Analysis begins with data gathering through in-house studies and acquisition of other public and private data. Data acquisition in the past has been quite extensive leading to highly reliable coal data inputs for tract evaluation. Budgetary restrictions will continue to limit data acquisition leading to more variable levels of data reliability for tract evaluation and greater uncertainty as to the coal resource.

Tracts are delineated (new tract delineation guidelines were issued in January 1982) by a team appointed by the Regional Minerals Manager. In addition to technical data, the tract delineation team also considers industry expressions of interest, potential for development, resource conservation considerations, land and surface ownership patterns, and regional leasing levels and guidance from the Regional Coal Team. Once tract delineation is completed, more tract-specific data may be acquired from drilling by companies with exploration licenses.

Tract evaluation is an ongoing process, continuing up to and after the sale. Before evaluations can be made, determinations of tract types, large or small, must be made. Either the surface management agency or MMS initiates this process. If a tract is classified as a small tract, further determinations as to high- or low-rent, small tract and type of high-rent small tract are also done.

Comments on the tracts delineated and preliminary determinations of FMV which are used for setting the minimum acceptable bids (MABs) are called for four to five months prior to the sale. Approximately three months prior to the sale, a decision is made on which tracts will be offered in the sale. Following this decision, MABs as calculated by MMS are given to BLM. A sale notice with MABs for each tract is posted 30 days prior to the sale. At the sale, a MMS representative is present. After the sale, this representative meets with BLM personnel and determines whether FMV has been received for the tracts that received bids.

Problems with Current Procedures

Problems with current procedures are primarily data acquisition, difficulties in assessing development potential and market trends, and use of evaluation results. The previously extensive and intensive drilling and mapping programs led to a high level of geologic information for tract evaluation. Current and future data availability will result in a variety of levels of data reliability for tract evaluation and greater uncertainty. Development potential and market place considerations are often unknown or difficult to assess prior to lease sale creating additional uncertainty. There are problems incorporating uncertainty into both DCF and comparable sales evaluation methods. In past evaluations, tracts with similar information levels and data reliability have been used in comparable sales analysis. When DCF analysis was used, a great amount of data was needed and it was assumed to be accurate. In current and future application of these methods, the level of uncertainty and risk must be incorporated into determinations of MAB and FMV. Although there are methods for incorporating uncertainty into DCF calculations, the current DCF modeling done by MMS does not incorporate such techniques and requires highly reliable data. The effort to correct this situation by the incorporation of uncertainty in DCF calculations may not be cost-effective. Data for comparable sales analyses have been scarce. This situation has been improving slowly as more lease sales are held.

MMS has been criticized for its reliance on the DCF analysis. Any DCF analysis based on a hypothetical mining operation is somewhat subjective regarding its inputs and represents only one point of view (in this case that of the Federal Government) of value. In particular, the Federal Government has been criticized because the Government evaluators do not face the same behavioral rewards and penalties as those persons preparing company bids and risking company investments. In addition, Government evaluators must make many assumptions concerning the market, getting their information on the market indirectly, rather than directly through face-to-face contract negotiations. Neither the Government DCF model nor the current comparable sales procedures take into account the actual investment decisionmaking of buyers that represent the market place at the time of the sale.

It should be pointed out here that in regard to western coal market place, the Government could adversely affect the market. As the Federal Government owns 60 percent and controls 80 percent of western coal, it is a near monopoly seller. Its leasing policies could affect coal lease prices.

In actual application, the DCF results have not been a reliable indicator of bidding behavior. DCF runs on coal leases offered for sale have, in too many instances, indicated no value or a negative cash flow on leases that have brought substantial bonus bids in the actual sales. In other instances, using either DCF or comparable sale analysis, MABs may have been set too high as some tracts saleable at lower MABs have received no bids. Many of the inconsistencies in estimating the FMV of the bonus are a result of a time differential factor. There is no flexibility for altering the published presale estimations to reflect local, regional, and/or national economic changes between the date of publication and the sale date. This lack of consistency between bonus valuations and bids gives the perception, if nothing else, that the Department is not able to estimate and insure the receipt of FMV.

There is also a general public misapplication of the term FMV to the bonus bid only. Generally, the bonus bid is only one part of the coal lease FMV. FMV consists of the bonus, rentals, and royalties; the bonus is but a fraction of the total.

Need for Change and Legal Obligations

Under the current practice MMS evaluates all tracts tentatively selected for sale. Because the evaluations are conducted presale, tracts considered but not offered for sale and those tracts that subsequently do not receive bids are evaluated. While this necessarily results in extra work, it has the advantage of assuring the public that the resulting tract value estimates have not been unduly influenced by the bids or bidders. However, if we inadvertently set our presale MAB above the tract bonus value, this precludes the leasing of a tract for which FMV is offered.

Shifting a significant portion of tract evaluation to the period after lease sale would reduce the amount of time and effort required for tract evaluation. In general, greater reliance on market information should reduce the chance of overpricing coal leases and reduce the risk of unnecessary bid rejection.

The legal requirement that FMV be returned from coal leases has its current basis in the Federal Coal Leasing Amendments Act of 1976 which mandates that:

> "No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease."

The term FMV has been defined by case law and practice in determining the just compensation in Federal eminent domain cases. Appraisal policy based on this case law clearly shows that the market value is the legally preferred measure of FMV. Of course, the FMV of the bonus will range up and down with changes in supply and demand, both of which are influenced by economic conditions.

One necessary condition for a competitive market to be sufficient to set FMV is that the buyers or sellers are willing parties to the transactions. To assure receipt of FMV for the rights conveyed by leases, payments received for the leases must be the price for such leases at the time of their sale set by the market which is sufficiently competitive to yield fair transactions between buyers and the sellers.

It must be acknowledged that in that concept the market place is a critical factor. In a declining economy, demand will be down. If the Government chooses to sell at that time, it can expect FMV to be lower than in a growing economy. The Government would be demanding more than FMV if it asked a price based on an expanding market.

The proposed alternative presented here will reflect the market place and permit more reliable estimates of the bonus portion of FMV.

Proposed Alternative: Postsale Evaluation

MMS believes this system would expedite the leasing process while meeting the legal requirement to obtain FMV for lease resources.

A. Presale Procedures

1. Maintain data base on coal sales:

   Each region should routinely maintain a data base containing resource and bidding information on all tracts previously offered for lease. The Tract Delineation Summary Report would also be used.

2. Establish floor bid:

   This is the minimum entry sealed bid to participate in subsequent oral bidding for a tract. It should be expressed in cents per ton and then translated to dollars per acre. The

Regional Manager forwards his recommendation regarding a floor bid along with a summary of supporting data to BLM. The BLM authorized offices, upon recommendation of the sale panel, may reject bids above the minimum entry sealed bid if, based on the sale results or other information, it determines that they would not achieve FMV for the coal resource.

The floor bid ensures all participants in oral bidding are serious bidders. Lacking any up-front payment prior to oral bidding, there might be a greater risk that the high bidder would default.

The established floor bid is based on professional judgment regarding the market value of the coal tract. No time consuming or detailed analysis is performed. If previous lease sales have been held in the Region, a qualitative comparison between the tract being offered and previously offered tracts can be made. Differences in general economic and coal market conditions as well as specific tract parameters should be considered. If market or sales data are scarce or unreliable, streamlined DCF analyses can be performed to obtain a comparative ranking of the tracts offered for lease.

After a qualitative difference has been estimated for tracts, floor bids can be established for each tract to be offered for sale. The floor bid should be set at a level high enough to prevent nuisance bids and ensure that only serious bidders participate in the sale. The floor bids must also be low enough to ensure that all legitimate competitive bids for the tract can be offered.

Depending on the quality of data, economic uncertainty, the number of and diversity among tracts or other factors, it may be advisable to group the tracts into a few categories based on similar perceived cents per ton value. A floor value for each category, rather than a specific value for each tract, is recommended. If all the tracts in the sale are roughly similar in coal quality and potential unit mining costs, a single floor bid (per ton of coal) for the sale may be appropriate.

Under no circumstances should the floor value be less than $25 per acre; this is current policy. Judgment should be used in rounding the floor values, i.e., $262 might be rounded to $250, $1283 to $1300.

B. Sale Procedures

1. Announce the floor bid in the Federal Register:

This step will eliminate low nuisance bids for valuable tracts.

2. Bidding procedures:

The auction is conducted by BLM. Recent coal lease auctions have been sealed bid followed by oral auction. The proposed procedures for postsale evaluation assume this type of auction.

Submitting a sealed bid on any tract in a category will qualify the bidder to bid orally on any other tract in that category or lower value category. During the oral auction it is important to keep track of who made each bid.

C. Postsale Procedures

1. Determination of adequate competition:

The first step in the postsale evaluation procedure will be to determine whether adequate bidding competition was clearly demonstrated in the lease sale. If adequate competition clearly existed for a tract, the high bid for the tract will constitute FMV and should be accepted.

The determination of whether adequate bidding competition has been demonstrated will proceed as follows. A profile of each tract and the circumstances of its bidding will be prepared. This profile will focus on three elements: competitive market structure, bidder participation, and high bid offered. The factors to be considered under each element are as follows:

Element 1 - Competitive Market Structure

- The known existence (or lack of existence) of special bidding advantages or disadvantages for any companies bidding or potentially bidding for the tract at issue.
- External conditions that would inhibit competition in general, e.g., high surface owner consent payment requirements.

Element 2 - Bidder Participation

- The number of bidders for the tract and active at the sale.
- The pattern of participation in oral bidding (a record should be kept of all bids placed including the bidder identity for each bid).

Element 3 - High Bid Offered

- The absolute size of the increase from the floor bid and from the maximum sealed bid to the final high bid.
- A qualitative assessment of the adequacy of the high bid relative to high bids received for other comparable tracts.

- The relation of the high bid to the presale estimate of the tract value and the reliability of the presale estimate.

Based on this profile, a judgment will be made as to whether or not the high bid represents a competitive price for the lease. Such judgments will be made in accordance with judgments specified for detailed example profiles that are provided in the appendix to this memorandum. A judgment may conclude that the high bid is either clearly a competitive price, clearly not a competitive price, or is possibly a competitive price. For tracts whose high bids are deemed to be clearly competitive prices, a recommendation for acceptance of the high bids as FMV will be made. For tracts whose high bids are deemed clearly not to be competitive prices, the evaluation proceeds to the next phase.

2. Comparable high bid analysis:

   Tracts whose high bids are deemed to not be clearly competitive will be further analyzed. This will be done using the comparable value based on all high bids received at the sale. This postsale analysis will utilize all the tract delineation information plus all bidding data obtained from the sale.

   The postsale comparability analysis for each tract will produce a range of comparable-value estimates for each tract analyzed (depending on how many sale tracts are selected as the base tracts for the comparability analysis). If the actual high bid for the tract is clearly within or above this range, a recommendation will be made that the bid be accepted. For tracts whose bids are not clearly within or above this range, the evaluation proceeds to the final phase.

3. Examination for special circumstances:

   The intent of these analyses is to indicate if there are special circumstances or additional public benefits from leasing such that the Department might have a greater than usual willingness to sell and, thus, would be willing to accept the high bid as FMV. The analyses would include the following:

   a. The likelihood of a higher bid if the tract is reoffered in a later sale and the size of the potential financial loss to the Government if a borderline bid is accepted.

   b. The expected loss of revenue due to delay of mining the coal.

   c. The likely impact of acceptance or rejection of this tract's high bid on bidding for other tracts in future sales.

d. The reliability of the information concerning the true extent of bidding competition and the true value of the tract in comparison with other tracts.

e. Potential for bypass of coal or for shutdown of existing mining operations if tract is not leased.

Where the above analyses indicate no special circumstances, a final recommendation for bid rejection will be made. Where the above analyses indicate special circumstances, the bid shall be accepted and the record indicate the full rationale for bid acceptance.

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
RESTON, VA. 22091

In Reply Refer To:
MMS-Mail Stop 654

JUN 2 1 1982

Memorandum

To: Deputy Director, Minerals Management Service

From: Associate Director for Onshore Minerals Operations

Subject: Postsale Evaluation Procedures for Powder River Basin

Misconceptions and confusion have arisen regarding the preliminary presale evaluation procedures and the new efficient postsale procedures for determining if the high bid for each coal sale tract represents fair market value (FMV). The "Uniform Appraisal Standards for Federal Lands Acquisition," states that "fair market value" is defined as the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obliged to buy.

If a high bid is adequate under our procedures and standards, we recommend to the Bureau of Land Management (BLM) that the bid be accepted. The amount of this bid is FMV. If no bids are received or the high bids rejected, there has been no FMV determination. FMV cannot be determined by either buyer or seller alone. Thus, FMV cannot be determined before bids are received. There are four possible sources of misunderstanding: (1) the meaning of the various terms used including FMV, minimum acceptable bid (MAB), entry level bid, and presale estimate; (2) the new streamlined postsale evaluation procedures; (3) the more reliable and preferred comparable sales analysis, rather than the income or discounted cash flow (DCF) analysis as a tool to make presale (preliminary) tract evaluations and, (4) the procedure involved in establishing and announcing entry level values.

Definitions

The term (MAB) is a source of confusion and has been used in different ways. It was originally used for Outer Continental Shelf (OCS) lease sales and was established at $25 per acre for all tracts. Bids below this amount would not be considered. The purpose of MAB was to eliminate nuisance bids. (Previously, bids had been received as low as 50¢ and $1 per acre).

As used in the coal program, the MAB established for each coal lease was published in the Federal Register and was the least amount that the Department of the Interior (DOI) would accept as FMV. The high bid at or above the published FMV generally would be accepted with little or no further evaluation. These published MABs were also the presale estimated tract values. They were at first calculated by the DCF method.

An entry level bid is the amount at which bidding must begin if the DOI is to sell the tract. Bids below the entry level will not be considered nor would the submittor be permitted further bids in our oral auction following the seal bidding. High bids at or above the entry level may or may not be accepted. This would be determined after the sale.

The "presale estimate" may be any type of value or relative value estimate prepared prior to sale date. It may be MABs or entry level bid as well as other measures of the worth of properties. It is, however, not FMV.

With the above definition of terms in mind, the following brief history of the development of the evaluation procedures for the Powder River lease sale details the use of these more reliable and streamlined procedures for assuring receipt of FMV.

New Procedures

Until very recently, evaluation of coal tracts offered for competitive leasing was by means of the DCF method. Over a 10-year period, in which no new major coal lease sales had taken place, insufficient data was available to permit the use of the comparable sales method, which is the preferred method. DCF results had not been entirely satisfactory because the calculated present values are extremely sensitive to small changes in some subjective inputs such as the discount rate, selling price of coal, and production rate. Most DCF calculated values were at the minimum of $25 per acre, but some tracts were attributed high values. Since many of these tracts were offered under emergency leasing criteria, and little competition was expected, the DCF calculated values were published as the MABs. Until recently, this caused few problems even for the tracts with high DCF values because it was a "sellers' market" for coal leases.

More recently, choice tracts that had received expressions of interest from industry were offered but received no bids. It appears on further evaluation that these large tracts had been assigned high MABs which apparently were far above what any potential buyer was willing to pay in the existing economic climate. Inherent problems of relying on the DCF, including variations in market conditions was addressed in a May 28, 1980, Secretarial Issue Document. That document recommended that if comparable sales data were unavailable, then a more conservative approach to establishing DCF value should be used in setting the MAB.

In anticipation of the April 1982 Powder River coal sale, the North Central Region (Casper) obtained market information for that forthcoming sale. One of these private market transactions was selected as representative and very comparable for the Powder River sale. One major difference was that the comparable sale was completed in July 1980, during a period of high energy prices and aggressive land acquisition programs.

The Casper office made a presale estimate of value by the preferred market data or comparable sales approach. However, in making that assessment no downward adjustment was made to reflect the softness of the market for coal leases in comparison to 1980. It was determined that this adjustment could be better done postsale when additional and more current information regarding market conditions would become available. This matter of a softer coal lease market and depressed economic conditions were discussed by telephone between Headquarters and Casper. However, while a change in policy on lease sale evaluation procedures was being considered and formulated at the DOI, the Casper office operating under programmatic deadlines established by BLM continued using the previously established but rather unreliable procedures for setting "MABs" within the schedule laid down by BLM.

On March 2, 1982, the Casper office sent a memorandum to the Director, BLM, Wyoming State office, setting forth the presale estimated tract values ("MABs") in accordance with existing practice. These MABs were the result of rather incomplete comparable sales analysis, since they had not been adjusted for the changed market conditions nor were current market data folded in that process. The March 2nd memorandum was superseded by one dated March 17 in which the "MAB" of one tract was changed. These memoranda were rescinded when policy was changed.

The Secretary's decision of May 28, 1980, to implement recommendations of the FMV Task Force left several procedures unresolved. The Office of Coal Leasing Planning and Coordination (OCLPC) was established under the Office of the Assistant Secretary for Land and Water to address these unresolved problems. A number of issue papers were identified, including determination of FMV.

Work on resolving these issues continued under the new administration. Secretary Watt wrote both industry and environmental groups asking them to identify cumbersome and burdensome regulations. Based on the replies, the Department set about to streamline the regulatory process for both onshore and offshore leasing. The problems regarding coal leasing under study by OCLPC were integrated with regulatory problems. In regard to streamlining and strengthening FMV determination, four options were proposed in March, 1982, as follows:

(1) Lease to the highest bidder,

(2) Make a presale estimate of FMV and establish a MAB or reservation price,

(3) Collect data before the sale, but make FMV determinations after the sale, and

(4) Continue present procedures.

Except for Option 1, which was unacceptable, Option 3 requires less manpower and allows the Department to consider the most current economic and market conditions as well as the degree of competition at the sale. Option 3 required some method to screen out anomalously low or "noise" bids. Option 3 was used at the Powder River sale, and the establishment of entry level bids was the method used to eliminate anomalously low bids.

It was widely recognized that large savings in money and manpower could be realized by the utilization of postsale evaluations. In addition, better evaluations would result. In that process, evaluations would concentrate on resource estimates. As you know, new postsale evaluation procedures have been successfully used for onshore oil and gas (NPRA) leasing and will be implemented in the future for OCS leasing.

Great savings can be realized since tracts not receiving bids do not need to be evaluated using the postsale analysis. Those savings are evident in the NPRA lease sale of January 27, 1982, in which of 59 tracts offered only 29 received bids. At the May 26 NPRA lease sale, only 12 of 209 tracts offered received bids.

The Department decided to test postsale procedures for the Powder River Basin coal sale on an experimental basis. Under that test establishing the presale estimate of values as the MABs below which the tract would not be sold was considered to be inappropriate. Such an MAB would imply that any high bid at or above the MAB value would be FMV. Such a procedure would in reality result in setting FMV presale, not postsale.

It was concluded to be appropriate to establish entry levels for bidding to eliminate unrealistically low bids. We thus established an entry level bid for each tract. These published entry level bids are related to the presale estimates in that four categories based on these estimates were established. Within each category, there was no direct relation between the presale estimates and the entry level bids. Bids meeting the entry level can be examined, along with all other available information to make a postsale determination if the high bid should be accepted as FMV.

The Minerals Management Service (MMS) developed postsale evaluation guidelines which were later modified after review by, and consultation with, the Office of the Assistant Secretary for Policy, Budget, and Administration. Officials from MMS Headquarters met in Casper from April 22 to 27 to brief North Central regional personnel on the postsale evaluation procedures that had been submitted to the Minerals Management Board. The postsale procedural guidelines were subsequently approved by the Chairman, Minerals Management Board, on April 27, 1982.

On March 26th, the Casper office notified Reston Headquarters that they had good reasons to believe that the preliminary presale estimates of tract values had been obtained by non-Governmental officials. These values were preliminary, had not been adjusted to reflect current market conditions and were not intended to be used as an MAB under the new streamlined procedures under which the FMV determinations would be made postsale. For the above reasons, we conclude that the Department's ability to receive FMV was not jeapordized. Furthermore, we do not believe that a potential bidder having information on such preliminary data would have any competitive advantage over a potential bidder lacking such information. Even though the integrity of the sale was not compromised, the Department is concerned that unauthorized people obtained official working documents. Oral communications between Headquarters and field personnel regarding these concerns have taken place and we intend to take further measures to decrease the possibility of future unauthorized disclosures.

Following the Powder River lease sale Headquarters and Casper personnel examined the bid data and again reviewed the steps in the approved evaluation procedures. Headquarters personnel also described to North Central personnel the format and documentation to be used in making their final recommendations regarding acceptance or rejection of high bids. The Economic Evaluation Committee (North Central Region) prepared a report on May 4th, in which they present their recommendations.

Of the thirteen tracts offered for lease, all but two received bids. The high bids were examined according to the April 27 procedures. Of the eleven tracts receiving bids, it was clearly in the national interest to lease ten for the high bid. We willingly sell the lease for the amount willingly offered. Fair market value has been obtained.

The high bid for one lease, Rocky Butte, appeared low in consideration of our postsale procedures. This tract received only one sealed bid and no competition was indicated by oral bidding.

Geologic and engineering data were reexamined but no errors were found in the previous calculations. The sole bid for Rocky Butte was compared to values established for similar tracts offered at the sale for which the high bids assured receipt of fair market value. The comparison was done as specified by the postsale evaluation procedures approved by the Chairman, Minerals Management Board. This comparison did not indicate that FMV would be achieved if the bid were accepted.

The postsale procedures mention special circumstances for consideration that might warrant leasing the tract for the high bid. The tract has no special circumstances that would make the Department a willing seller for the amount bid. Therefore the recommendation is to reject the sole bid for Rocky Butte.

We believe that the conclusion to reject the high bid on the Rocky Butte tract and to accept the high bids for the other tracts was correct. We recommend the continued use of postsale evaluation for all large regional coal sales. Various methods of establishing entry level bids have been considered and could be used. Modifications of the existing guidelines and procedures should be made to strengthen the evaluation process reflecting experience gained in Casper in the Powder River sale. We will proceed in working with Casper and other field offices toward a formal system for use by all field offices.

Andy Bailey

Andrew V. Bailey

TESTIMONY OF
DAVID C. RUSSELL
DEPUTY DIRECTOR
MINERALS MANAGEMENT SERVICE
DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
SUBCOMMITTEE ON MINES AND MINING
JULY 15, 1982

Mr. Chairman, I appreciate the opportunity to appear before the Subcommittee and describe for the record the Department's fair market value process for coal lease offerings, with particular emphasis upon the recent sale conducted in Wyoming's and Montana's coal rich Powder River Basin.

Before discussing the Powder River sale, I would like to briefly describe the motivation behind Interior's renewal of Federal coal leasing, and past and present procedures for ensuring receipt of fair market value for resources sold.

The Federal Government owns, in the name of the American people, 100 million acres of coal lands--less than one percent of which is under lease. Coal leasing has been at a virtual standstill since 1971 when a moratorium was placed on leasing to give the Department time to develop an overall Federal coal leasing policy. A decade later--the Government having taken its time developing this new policy--Interior renewed lease offerings, in Colorado, Utah, Alabama, and now, Wyoming and Montana.

There are those, however, who insist that Interior should not lease more with "so much already under lease." That insistence, however, is balanced by the many critics of the coal leasing moratorium, including the General Accounting Office, Department of Justice, Council of Economic Advisors, Department of Energy, and the old Office of Wage and Price Stability. The principal theme of these Federal agency analyses, each prepared during the last Administration, strongly argues that a policy of leasing to meet the demand for reserves is necessary to avoid significant increases in consumers' price of energy derived from coal.

Coal is not a homogeneous commodity in its physical properties or in its cost of production. Just as there are many different kinds of coal that can be produced at many different prices, the range of coal properties required by different coal users, as well as their physical location, also varies widely. To ensure that these consumers do not pay inflated prices for their coal supply, it is essential that there be a significant number of coal producers who can meet individual user's needs. Thus, coal leasing policy must make available for sale enough coal reserves to ensure that several coal producers will have a sufficient amount of reserves to compete for individual coal user's contracts.

Quantifying the demand for reserves is an imprecise science, but several additional rationale suggest that the demand for Federal coal is significant and, if leasing is not forthcoming, will mean higher costs for consumers:

1. The U.S. Geological Survey's (USGS) coal transportation model indicates an annual cost to the American economy could approach $2 billion by 1995 if restrictive coal leasing policies, such as those of the last Administration, were to continue. The USGS finds that additional leasing, such as in the Powder River Basin, is the basic ingredient to cost savings to the consumer.
2. As indicated through expressions of interest the Department routinely solicits, there was a demand for 6.1 billion tons of reserves in the Powder River Basin. The Department had 42 billion tons of environmentally suitable coal from which to choose. Based on recommendations from our regional coal teams, Secretary Watt chose to offer 1.6 billion tons of reserves in Powder River--significant tonnage, but far less than that suggested to us.
3. Of the 18 billion tons of reserves currently under lease, a significant portion may not be developable for a number of reasons, including insufficient tract size, access problems, lack of rail transport or water, or legal climate. In addition, to presume that every ton under lease should be committed to development prior to leasing an additional ton is to conclude that all coal to be leased in the future is more costly to mine than already leased reserves--clearly a failed logic. In fact, much of the tonnage recently offered for lease in the Powder River Basin is of lesser mining cost than existing leased reserves in the Basin.

4. The Department of Justice has advised the Interior Department on numerous occasions that anything short of leasing to meet the full demand for reserves could be anticompetitive and serve as a barrier to entry into the western coal market.

The Department's April 28 coal lease offering in Wyoming and Montana was the largest sale of publicly owned coal in the history of America. It was also the most successful in that a total of $55 million in high bids was received, far higher than for any previous lease sale. Although competition for individual tracts was not intense, 2 of the 6 new mine capacity tracts received more than 1 bid. It is important to note that all of the new mine tracts received bids, a solid indicator of the demand for additional leasing. In addition, for 7 of the 13 tracts offered, the Department expected only 1 bidder, at most, given that these were captive "maintenance tracts" and thus were suited to the adjacent operator. Eleven of the 13 tracts received bids, 9 of the 11 reflect a fair market value (FMV) 1/ return to the public, 1 (the Rocky Butte tract) was rejected because it did not meet the criteria established to determine fair market value, and 1 is still pending review by the Small Business Administration.

1/ The Uniform Appraisal Standards for Federal Land Acquisition define FMV as the "amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obliged to buy." This includes not simply bonuses but the sum of bonuses, rent, and royalty.

Largely as a result of an unauthorized disclosure of internal Departmental analyses, some controversy has arisen concerning the question of whether the high bids received and accepted by the Department constitute fair market value. To address this concern, a brief explanation of the process used by the Department in conducting the Powder River Sale is appropriate.

Earlier this year, the Minerals Management Service (MMS) prepared an estimate of the value of the tracts to be offered for sale in the Powder River Region. Consistent with the Department's policy established in 1979, MMS envisioned that the resulting estimates of value for the individual tracts would be used as minimum acceptable bids (MAB). (MAB's, under the Department's rules, constituted the minimum dollar per acre amount that a bidder had to offer to have the bid considered by the sale panel.) When the estimates of value were reviewed at the Departmental level, it was determined that the estimates were too high for use as minimum acceptable bids for the purpose of bidding for the coal leases. This determination is consistent with standard bidding theory which warns that minimum bids set at a high level can chill bidding competition.

For these reasons, it was determined that for the Powder River sale the post-sale evaluation of the bids received would have to be modified to reflect the revised concept of minimum acceptable bids used in the sale. Shortly after March 2 when the first presale estimates of tract value were transmitted to Washington for review, and formally through a meeting of senior policy staff of the Department on March 19, the determination was made to publish "entry-level bids," instead of the presale estimates of tract value as minimum acceptable bids. This determination obviously predated our knowledge of the unauthorized release of the MMS analysis through a memorandum dated March 26. The entry level minimum bids were subsequently published in the Sale Notice on April 5, 1982. The detailed internal procedures to be utilized by the MMS in determining the acceptablity of bids were approved by the Under Secretary on April 27. The sale took place on April 28, 1982, as scheduled.

A review of the sale results is also in order to show why the Department is confident that its procedures resulted in a successful sale, meeting the statutory obligation to obtain fair market value. A first important point concerns the amount of coal offered for sale. Consistent with the Department's existing regulations, the level of leasing for the sale was based on Department of Energy estimates of demand in the year 1990. The amount of coal the Secretary chose to offer for sale in Powder River had been recommended by the Regional Coal Team for that region as their preferred alternative in the Environmental Impact Statement. Moreover, the amount of coal offered for sale was approved by the Governors of Wyoming and Montana.

A second point concerns the relationship between high bids received and the MMS presale estimates of tract value. It has been argued that these estimates of tract value constitute fair market value even though the data used to develop them were unrealiable. Nevertheless, if we were to assume that these estimates of tract value were actually valid, it is important to note that all of the high bids accepted by the Department in the Powder River sale met or exceeded the presale MMS estimates except the high bid for one tract--Little Rawhide Creek--which is a production maintenance tract. Production maintenance tracts are not, as a rule, integral mining units and, consequently, cannot be treated as such in determining their value.

In conclusion, I would like to note that the Department is actively looking for means of increasing the level of competition and ensuring receipt of fair market value for Federal coal leases. We welcome any advice you have toward these objectives.

Thank you.

A third point . . . 1970 sales in 1982 dollars.

DOE/EIS-0066

Final Environmental Impact Statement

THE ROLE OF THE BONNEVILLE POWER ADMINISTRATION IN THE PACIFIC NORTHWEST POWER SUPPLY SYSTEM

Including Its Participation In A Hydro-Thermal Power Program

Responsible Official

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Washington, D.C. 20545

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DEPARTMENT OF ENERGY
(DOE/EIS 0066)
FINAL ENVIRONMENTAL STATEMENT

The Role of the Bonneville Power Administration In the Pacific Northwest Power Supply System: Including Its Participation In a Hydro-Thermal Power Program

Prepared By
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(December 1980)

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Abstract

This statement evaluates the environmental impacts associated with the operation and development of the regional power system under various levels of regional cooperation and coordination. This analysis examines the impacts of these varying institutional arrangements upon the operation of the existing/committed regional system, as well as their generic effect upon the future development of a coordinated regional power planning process. Also a "worst-case" analysis of future power resource development is presented. Included as part of this resource analysis is a series of scenarios which evaluate the impacts of nonthermal and thermal resource development. Those alternatives or institutional arrangements which advocate a formalized and comprehensive regional decisionmaking process are felt to be environmentally preferable in that they assure the consideration of nonpower interests and maximize the efficient use of the existing system.

PURPOSE AND NEED

Consistent with its mission to help assure a viable electric energy system in the Pacific Northwest, the Bonneville Power Administration (BPA) evaluates in this EIS, various BPA functions or roles in regional energy activities. BPA feels that a regional energy program would best serve the interests of the region by assuring that regional electrical needs would be met. However, such a regional program does not now exist, nor is it within BPA's present authority to implement one. Therefore, this EIS will study the definition and implementation of various BPA roles in the context of actions and reactions which may be taken by individual regional entities, such as utilities and State governments or groups of such entities. This evaluation will include BPA's participation in the Hydro-Thermal Power Program (HTPP), both historically and in the existing vestiges of that program.

BPA is not proposing, nor can it identify, and consequently does not evaluate, any existing discrete program to solve the projected energy shortage in the region. While the HTPP was designed to solve that problem, BPA's present authority does not permit such a program. BPA does propose to do what it can unilaterally in order to help relieve the energy shortage, through conservation for example, and whatever may be practicable or required under its existing authority in cooperating with other entities in the Pacific Northwest. This EIS examines the activities of the region which are subsequent to the HTPP, but these activities, even taken together, do not constitute a discrete or unified program but instead constitute the existing "program" only by being the sum of all the actions within the region. As a part of its regional analysis, BPA also evaluates, in alternatives 3 and 4, plans, which, if either were to be adopted by the Congress, would not only redefine BPA's role but would in addition provide the mechanism for the development of a regional program to solve the energy shortage.

SUMMARY

Final Role EIS

Status: This EIS is a finalization of a Revised Draft EIS (RDEIS) filed with the Environmental Protection Agency (EPA) in April 1980 (DOE/EIS-0066). The revision was undertaken in response to comments received on the original draft and rapidly changing circumstances including the circulation of legislative proposals which, if enacted, would drastically alter the regional power planning process in the Pacific Northwest. The original draft EIS was filed with the President's Council on Environmental Quality (CEQ) in July 1977.

Scope: This programmatic environmental statement examines the impacts of the operation and development of the Pacific Northwest regional electric power supply system. This analysis includes an examination of the existing system and potential developments under alternative arrangements described in the proposal and alternatives.

The alternatives and the proposal are based upon differing levels of regional cooperation and coordination or alternative approaches to the one-utility concept, which is the main object of evaluation. Under this concept, the region's generation and transmission facilities are operated, as much as possible, as if they were under single ownership. The proposal and alternatives are designed to cover the range of institutional mechanisms for assuring a viable power supply system in the Pacific Northwest; they represent the range of alternative approaches to the one-utility concept. The alternatives range from minimal regional cooperation and coordination, through historical levels of cooperation in the Pacific Northwest, to a formal comprehensive approach to the one-utility concept. Correspondingly, the proposal and alternatives are also ordered to reflect increasing levels of BPA responsibility for the region's electric energy supply system.

In addressing the impacts of the regional power supply system, the alternatives examine the system as a whole. Accordingly, this analysis includes an examination of the impacts of the Federal Columbia River Power System, as well as non-Federal hydro and thermal facilities built to serve regional electrical firm loads, whether or not these facilities are located within BPA's geographical service area.

In addition to the institutional analysis this EIS includes an examination of the environmental impacts of future power system development. Because future energy resource mixes, i.e., the amount of energy to be contri- buted by each resource type, are not now known, a hypothetical or "worst-case" analysis was utilized. Following this approach, five resource scenarios were presented in the RDEIS for meeting regional electrical loads through 1998. These scenarios included two which were based upon development of renewable resources and conservation and three which were based upon conventional coal-fired and nuclear resources. In addition to these five, a sixth scenario summarizing the Natural Resource Defense Council's (NRDC's) Alternative

Scenario has been included in this final EIS. The NRDC submitted the Alternative Scenario as part of their comments on the RDEIS. The Alternative Scenario attempts to demonstrate that a regional power program relying on energy conservation and renewable resources is technically possible.

The actual resource types and mixes to be selected in the future are dependent upon a number of variables, including the outcome and application of existing and developing regional power planning processes, as well as technological developments which cannot be anticipated. As specific plans or proposals for power resource development are formulated, they in turn will be the subject of any necessary environmental assessments and EISs.

Proposal and Alternatives: Each of the alternatives and the proposal have been divided into two sections, one describing BPA's activities and the other giving an indication of complementary actions and reactions from the non-Federal sector of the regional power system.

The alternatives considered assign increasing levels of responsibility to BPA. Along this same continuum, alternative levels of regional cooperation and coordination (the one-utility concept) are examined, beginning with a minimal level under Alternative 1 and ending with a maximum level under Alternative 4.

No mitigation measures are identified outside those already included in the proposal and alternatives.

Alternative 1--Legislation Reducing BPA's Role in the Region. Under this alternative, BPA's existing authority, particularly with respect to transmission construction, would be significantly reduced through repeal of portions of the Federal Columbia River Transmission System Act (FCRTS) of 1974. Under such use restrictions, the Federal transmission system would not be available to facilitate regional planning involving non-Federal power. Except for Federal projects, BPA would have no responsibility to provide additions to the Federal transmission system. The regional structure depicted would resolve resource and transmission needs within the region through independent efforts by diverse utility interests.

Alternative 2--Existing Authority, Reduced BPA Role in the Region. Under this alternative, no new legislation, either reducing or expanding BPA's authority is considered, and no dynamic change from past practices is contemplated. For this reason this alternative is considered to be the "no action" alternative. Under this alternative, BPA would provide transmission and other services sufficient to deliver Federal power from Federal projects to preference customers. BPA would also offer to construct such other additions to the Federal transmission system as needed to integrate non-Federal generation. However, regional utilities and possibly other entities, such as State, regional, subregional, or local agencies, would form one or more "mutual operating agencies" which would construct and operate generating and transmission facilities, schedule the delivery of power generated by their plants, and provide other services which participants found economical to acquire through such an agency. To the extent that the mutual operating agency provided such services, BPA's level of activity in constructing transmission system facilities and additions would be reduced.

BPA Proposal--Optimum Use of BPA's Existing Legislative Authority. The proposal assumes an increased level of BPA involvement in the application of the one-utility concept based upon BPA's existing legislative authority. The proposal includes a new energy conservation policy that is feasible under existing legislative authority.

Under the proposal, BPA would provide services (load factoring, forced outage reserves, and load growth reserves) to Pacific Northwest utilities to integrate their new and existing non-Federal generating resources into the Federal Columbia River Power System (FCRPS) for their use. BPA would offer these services to Northwest preference and nonpreference utilities for resources constructed either within or outside the region in order to facilitate coordinated regional operation of generation and transmission facilities.

The regional complement to the proposal assumes the continuation of cooperation agreements between Northwest power planning entities and also assumes that there would be incentives for utilities to enter into multiparty construction agreements to capture the economies of scale and other benefits and that the Pacific Northwest Utilities Conference Committee or some similar entity comprised of regional utilities would continue to participate in identifying the need for and characteristics of proposed regional generation resources.

Alternative 3--New Authority, Increased BPA Role in the Region. This alternative incorporates the basic concepts of legislation as originally introduced by the Northwest congressional delegation during the 95th Congress (S. 3418 and H.R. 13931) and again during the 96th Congress (S. 885 and H.R. 3508).

Under this alternative, a statutory planning process would be implemented involving the region's governors, local governments, utility and industry representatives, and the public. This process would be designed to guide BPA actions in regional power planning and development.

BPA would have direct purchase authority to acquire power from non-Federal power plants necessary to meet the firm loads of all the region's utilities. In acquiring resource capability under this alternative, first priority would be given to acquiring conservation, then renewable, and then conventional resources with priority given to high efficiency conventional resources.

BPA would have the ability to assist in the coordination of resource planning and development to the extent that it would be responsible for supplying power to meet utilities' and industries' loads. However, utilities would have the option to continue to plan and build resources and distribute power to meet their loads. Under this alternative, BPA would be better able to implement the one-utility concept than under previous alternatives through its active involvement in the purchase and sale of power.

Alternative 4--New Authority, Regional Energy Commission. This alternative incorporates some of the basic principles of legislation introduced by Representative James Weaver of Oregon in November 1977 (H.R. 5862) and in the 96th Congress (H.R. 4159). Under this alternative, a regional energy commission with authority to determine regional energy policy would be established, and in cooperation with BPA and regional non-Federal utilities, would provide integration, pooling, and marketing of all the electric energy in the region. Under the direction of the Commission, BPA would become the energy wholesaler for the Pacific Northwest, purchasing all energy generated or acquired by the participating utilities and assuming a full public utility responsibility to serve those utilities' loads. As part of this arrangement, BPA would undertake the construction or acquisition of such traditional resources as needed to meet loads which could not be met from conservation or renewable resource development. Under this alternative, the Commission would function as a Board of Directors to BPA, setting policy and directing BPA's actions.

Under this alternative, BPA would offer full requirements contracts to all participants in the Pacific Northwest. A participant would be any regional utility which sells all its electrical energy, either generated or acquired, to BPA.

In planning and construction of generating resources and major transmission facilities, the one-utility concept would become a reality. Participating utilities would assume primarily a distribution function. Participants would develop energy resources for their own use only where they could do so more economically than BPA or where a utility or group of utilities owned a resource that had not been authorized by the Commission and whose output would not be acquired by BPA. Nonparticipating utilities would operate essentially as they do now, being responsible for their own load forecasting, planning, system construction, and distribution. BPA would cooperate, to the extent feasible, with nonparticipants, and to the extent that nonparticipants requested, would integrate and coordinate resources and provide other services.

Impacts: Environmental consequences are first discussed in terms of generation, marketing, and transmission impacts associated with the operation of the entire regional power supply system (Federal and non-Federal components) as it exists today. The impacts identified include: the construction and operation of thermal generation plants with resultant impacts on air, land use and water; the adverse impact of hydroelectric facilities on fisheries, riparian vegetation and wildlife; displacement of fossil fuel generation with that from hydroelectric facilities; the adverse impact of BPA's direct-service industrial customers on the physical environment and the stabilizing effect on the regional power system of BPA sales to these industries; the adverse impact on land use of construction and operation of transmission lines; impacts of right-of-way maintenance on vegetation; the visual impact of transmission facilities; and the mitigating effect of conservation programs on the impacts of energy use and the fabrication and installation requirements of conservation technologies. Because the facilities described are in place, their impacts are seen as an irreversible and irretrievable commitments of resources. Further, these impacts serve as a baseline for comparing the incremental impacts of the proposal and alternatives.

In assessing impacts of the proposal and alternatives on future power system development, three interrelated areas were identified as having environmental significance. These areas include the impacts related to varying levels of regional cooperation and coordination, impacts of potential load-resource imbalances, and the influence of nonpower considerations on hydro system operation and impacts.

It was found that centralized coordination (regional interaction) as included in Alternatives 3 and 4, increases the accuracy of the regional forecast, broadens the range of resource options available, increases efficiency of resource use by permitting utilization of regional as well as interregional diversities, and provides a focus for input from special interests including representation of nonpower hydro resource concerns. In addition, it was concluded that centralized coordination minimizes the possibility of load-resource imbalances, reducing the possibility of both underbuilding and overbuilding generation resources.

In analyzing the potential impacts of specific future resources, the generic impacts of 21 different potential regional energy resources are discussed ranging from small renewable resources such as wind energy conversion systems to unconventional resource development including synthetic fuels. These generic discussions serve as the basis for evaluating the impacts of five future resource scenarios. The future resource scenarios presented are based on a "worst case" analysis. As such, the scenarios are conjectural and have been designed in an attempt to overcome the limitations of information which is currently available. These scenarios include 100 percent renewable resource development (Scenario A), maximum conservation (Scenario B), 100 percent coal-fired generation (Scenario C), 100 percent nuclear generation (Scenario D), and mixed coal-fired and nuclear generation (Scenario E). A sixth scenario (Scenario F), summarizing the NRDC alternative scenario, has been included in the FEIS to reflect NRDC's estimation of the technical potential or extent to which the region could rely upon a combination of conservation and renewable resource development.

The impacts resulting from these scenarios vary widely, ranging from large amounts of localized and even regional air emissions from coal generation to dispersed and remote emissions from small-scale renewable resources. Transmission requirements were found to be greatest under Scenario A due to its reliance on numerous generating facilities. Fuel transportation impacts would be greatest with coal development as in Scenario C and E as would risks to human health from air emissions.

Although nuclear development poses little risk from air emissions, it does involve radiological impacts.

In addition to evaluating impacts of potential future resources, this document discusses the change in the impacts of the existing generation, conservation, marketing and transmission practices that would result from implementation of the proposal or alternatives. Generally, it was concluded that the proposal would provide for continuation of traditional operational and planning approaches with the exception of an added emphasis on conservation. The first and second alternatives would most likely result in limited flexibility with regard to resource planning and would also result in operational restraints favoring maximum power production. Conversely, Alternative 3 and 4 would place a greater emphasis upon adopting a diversified resource base, thereby maximizing future planning flexibility and making possible the routine consideration of nonpower interests in the river system such as fisheries and irrigation demands.

Conclusions: The most fundamental conclusion reached in this analysis is that the one-utility concept offers environmental, economic, and technical advantages in the development and operation of a regional power supply system, which increases as the application of the concept is increased.

Additionally, it was concluded that there are no viable alternatives to the one-utility concept for the existing PNW electrical power system. Rather, only alternative approaches or mechanisms for implementing this concept are realistic. Accordingly, in presenting the proposal and alternatives, the major variable is the degree to which this concept is employed in the future development and operation of the Pacific Northwest power supply system.

Alternatives 3 and 4, which provide for a formalized, stable, and comprehensive regional power planning process, are environmentally preferable. Several considerations presented in the text which support this conclusion are:

1. As a result of formalized decisionmaking processes embodied in these alternatives, there is greater assurance that nonpower considerations will be routinely considered in the use of regional hydro resources.

2. This decisionmaking process would also minimize uncertainties regarding a regional load-resource balance, and would minimize the necessity for reliance upon extraregional resources.

3. Further, the planning processes would require that a greater emphasis be given to adopting a more diversified resource mix, including consideration of renewable or unconventional resources, which would decrease the impacts associated with the development and operation of conventional thermal resources and the regional hydroelectric system.

For the above reasons, Alternatives 3 and 4 are considered to be environmentally preferable alternatives. However, because these alternatives are not within BPA's current authority, the proposal was selected because it relies only on BPA's existing authorities.

Controversy. Controversy exists at all levels of electric power planning and development in the Pacific Northwest. In this sense, controversy includes not only disagreement over the extent of impact but also disagreement over the substance of the proposal and alternatives.

Included in this controversy are the issues of rates (both design and level), allocations (preference customers' rights, service to BPA's direct-service industries, etc.), future resource development including the extent of the region's reliance upon conservation (voluntary versus mandatory measures), level of BPA authority to purchase power resource capability, effect of BPA services on resource development, and the degree of public and State involvement in regional power planning decisions.

Only the latter issues relative to resource alternatives and institutional checks and balances are discussed in this EIS. The controversy surrounding the development of rates is discussed in BPA's 1979 Wholesale Rate Increase Final EIS (DOE/EIS 0031 F) and those issues relative to allocations will be discussed in BPA's Allocation EIS currently under preparation.

Unresolved Issues: There are two major unresolved issues confronting electric power planning in the Pacific Northwest. The first is the outcome of ongoing legislative efforts which could greatly alter the regional power planning process in the Pacific Northwest as well as BPA's role in that process.

The second issue is the future power resource mix to be developed in the Northwest. Resolution of this critical issue is dependent upon the development of regional power planning processes or new technological advances.

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Chapter I

OVERVIEW

FOREWORD

Given the unique character of the Pacific Northwest and its resources, uncertainties about its future demand for power, the pluralistic nature of its power industry, its existing power planning arrangements, the constraints of political reality, the feasibility of existing energy technologies, the experimental nature of future technologies, and the serious power planning problems the region confronts, the question arises: What is the best practical way to meet future regional electric energy demand cost-effectively, to avoid the social and economic costs of energy shortages, to minimize adverse environmental impacts, and to conserve nonrenewable resources?

Numerous alternatives have been suggested and considered. From that process has emerged a Bonneville Power Administration (BPA) proposal. The BPA proposal consists of two principal elements: (1) optimum use of existing authority, including adoption and implementation of an effective and feasible energy conservation policy, to achieve a "one-utility" concept/goal in an expeditious and timely manner, and (2) endorsement in principle of additional authority that would reinforce achievement of that goal.

What follows in this overview is an examination of the circumstances underlying the selection of the BPA proposal, a summary of the proposal and alternatives, and an explanation of the BPA Final Role Environmental Impact Statement (EIS).

INTRODUCTION

This overview summarizes some of the salient features and basic purposes of the BPA Final Role EIS. The overview will also provide an explanation of why and how the Role EIS was undertaken, and will set the stage for the more detailed analyses which are contained in the remainder of the statement. It is not intended to stand alone as a complete summary of the Role EIS, but it should provide the reader with an intelligible "short course" characterization of what the Role EIS is all about.

This overview discusses the following topics:

1. BPA legislative authority
2. BPA mission and goals
3. Guiding principles
4. Setting (including description of the regional and Federal electric systems and the Hydro-Thermal Power Program)
5. Judicial decisions
6. Relationship of the original Draft Role EIS to the Revised Draft and Final Role EIS
7. The BPA proposal: selection criteria
8. The BPA proposal: key elements
9. Alternatives
10. The ranking alternative

BPA LEGISLATIVE AUTHORITY

BPA operates under the provisions of several Federal statutes, the two most important of which are the Bonneville Project Act of 1937 and the Federal Columbia River Transmission System Act of 1974. Other legislation significantly affecting BPA includes the Flood Control Act of 1944, the Pacific Northwest Regional Preference Act of 1964, and the Grand Coulee Third Powerhouse legislation of 1966.

The Bonneville Project Act has three key power planning features. First, the Act directs the Administrator to construct and operate a regional transmission grid to interconnect generation and to transmit electric energy to markets. Second, the Act contains a "preference clause" which requires that preference and priority in the sale of Federal power be given to publicly owned and cooperative utility systems. Third, the Act does not grant BPA the authority to own or construct any generating plants. BPA markets power (1) generated at other Federal agency hydroelectric plants, and (2) acquired by exchange or net-billing arrangements from non-Federal facilities.

The Transmission System Act is significant because it puts BPA on a self-financing basis. As has always been the case, all costs of the Federal Columbia River Power System, including all costs associated with BPA acquisition of power from whatever source, must be recovered from rates paid by BPA's customers. None of these expenses is to be paid by the U.S. Treasury or the Nation's taxpayers. Before the Transmission System Act, however, after turning over to the Federal Treasury all its receipts, BPA had to obtain congressional appropriations every year for capital investment and operating expenses. The Transmission System Act reinforces the self-financing policy and eliminates the roundabout need for BPA to obtain annual appropriations. All BPA receipts are now deposited in a special BPA fund in the Treasury from which BPA may make expenditures, if they are included in BPA's annual budget submitted to Congress, without further congressional appropriation.

Among the key legislative authorities and responsibilities by which BPA is bound are the following:

- BPA is the marketing agent for virtually all electricity generated by Federal hydro projects in the Pacific Northwest.
- BPA is to market Federal power so as to encourage the widest possible diversified use at the lowest possible rates consistent with sound business principles.
- BPA must give preference and priority in the sale of Federal power to public bodies and cooperatives.
- Pacific Northwest consumers shall be guaranteed first call on electricity generated at Federal hydroelectric plants in the Northwest; only surplus power (power which cannot be sold or

conserved for later sale in the region) generated at Northwest Federal dams can be marketed by BPA outside the region.

- BPA's wholesale power rates must recover the cost of producing and transmitting Federal and other acquired power, including timely repayment of the Federal investment, with interest.

- Construction costs of Federal projects allocated to irrigation that are beyond the ability of irrigation water users to repay shall be charged to the Federal Columbia River Power System.

- BPA may establish uniform rates throughout the region to extend the benefits of an integrated transmission system and encourage the equitable distribution of electric energy.

- Rates must be adjusted at least once every 5 years.

- BPA contracts for the sale of power cannot exceed 20 years.

- BPA contracts for sale of power to nonpreference utilities must be cancelled upon 5 years notice if the power is needed to satisfy requirements of preference customers.

- The Federal transmission system shall be constructed to:

    1. serve BPA's customers,

    2. maintain the stability and reliability of the Federal system,

    3. integrate power from Federal and non-Federal generating units, and

    4. provide interregional transmission facilities.

- BPA may issue and sell up to $1-1/4 billion of bonds to the U.S. Treasury, at interest rates comparable to rates prevailing in the market for similar bonds, to assist in financing transmission construction.

- Proceeds from the sale of such bonds and all BPA receipts must be deposited in a special BPA fund in the Treasury from which expenditures can be made without further appropriation, provided they are included in BPA's annual budget submitted to Congress.

- Among the things for which BPA can spend money from the BPA fund are the following:

    1. building, operating, and maintaining transmission facilities,

2. transmission research and development,

3. power marketing,

4. short-term purchases of power to meet deficiencies and purchases of power as an agent for others if paid for with their funds,

5. emergencies, and

6. interest payments and repayment of the Federal investment.

- Excess power can be exchanged to secure economical operation or to meet demand in an emergency.

Many of these provisions were enacted into law when economically feasible hydroelectric energy resources were far from fully developed and when electric service was not universally available throughout the Pacific Northwest, particularly in rural areas. Moreover, when the Bonneville Project Act was enacted, the Nation was in the midst of its most serious and sustained economic depression. There was an urgency about public works in general and development of multipurpose water resources projects in particular. World War II ended the Great Depression and focused the Nation's attention upon the urgent need to produce military materiel, the production of which was greatly facilitated by the availability in the Northwest of large blocks of hydroelectric power.

Given the circumstances of a Great Depression followed by a World War, and recognizing the state of electrification in the region at the time and its promise for a better life for all, it is not difficult to understand how phrases such as "widest possible use" and "lowest possible rates" came to be carved into the pieces of authorizing legislation for BPA. Today, electricity is available virtually everywhere throughout the Northwest; it is recognized that it is an indispensable commodity which consumers value highly and the costs of which they are willing and able to pay, and that other interests such as protection of environmental quality and conservation of nonrenewable energy resources--matters of only modest concern 30 or 40 years ago--have only recently become elevated in national and regional importance.

The point is, times have changed. The issues then are no longer exclusively the issues now. For example, for the first time in the region's history, the real costs of electric energy have begun to rise--dramatically. For another example, there is now much more concern over the availability and cost of nonrenewable energy resources, particularly oil and gas. And for yet one more example, as the Columbia River and its principal tributaries approach optimum development, there are now more seriously competing demands upon this renewable resource. Clearly, the region is confronted with a new and different challenge.

BPA MISSION AND GOALS

BPA's mission, as it has developed over the decades in response to its legislative mandates, is quite straightforward. It is to help assure a viable electric energy system in the Pacific Northwest while balancing economic, technical, and environmental considerations. BPA is responsible for:

1. marketing power from Federal hydroelectric projects as well as power acquired from other sources,

2. integrating the operations of the region's generating and transmission systems in cooperation with other entities in the region, and achieving, as nearly as practicable, the economic and environmental benefits possible from a single-system operation (i.e., the one-utility concept), and

3. constructing transmission facilities to integrate and transmit the electric power from Federal and, when requested, non-Federal generating units, providing service to BPA customers, furnishing interregional transmission capabilities, and maintaining the electrical stability and reliability of the Federal system.

Consistent with the existing statutes under which it operates, and to help shape and guide its mission and keep it on track, BPA's goals are to:

1. maximize the benefits to society from the Federal investment in the region's electric power facilities;

2. conserve energy and other resources;

3. preserve and enhance environmental quality;

4. promote a safe and reliable electric energy supply for the region and for interconnected regions;

5. achieve an equitable sharing of costs among those receiving benefits from the Federal investment in the region's power facilities;

6. make timely repayment to the Treasury of the Federal investment in the region's power facilities, plus interest, and recover all other costs of that system through BPA revenues from its ratepayers; and

7. pursue technical and economic efficiency in production, transmission, distribution, and use of electricity.

Except for agency-specific requirements, such as BPA's obligation to repay the Federal investment in, and to recover all other costs of, the Federal Columbia River Power System, BPA's goals and the Pacific

Northwest's goals with respect to the region's electric power system can be assumed to be the same.

Invariably, statements of missions and goals sound platitudinous. No one seriously opposes maximum benefits to society, balance between demand and supplies, safe and reliable electricity, equitable sharing of costs, environmental quality, or energy conservation. It is obvious, however, that some of these goals sometimes conflict with one another and that choice of programs and policies will often involve reasoned trade-offs among goals. For example, the goal of a reliable and safe power supply is not always compatible with the goal of conserving resources.

Much can be done to reduce incompatibilities and to optimize outcomes. But some people assign higher values to certain goals than to others. Not everyone supports the same goals with equal intensity. And, given a set of goals such as BPA's, different individuals and interests could easily reach different conclusions when it comes to decisionmaking on a particular plan or program.

The principal importance of BPA's goals is that they can elevate everyone's sensitivity to what it is that BPA's programs are fashioned for and, assuming the goals are made an important part of day-to-day agency operations and policymaking, ensure that, in the formulation and execution of programs, each goal will be considered, none will be overlooked, and when some must be subordinated to or balanced against others, it is done with full awareness of that fact and not as a matter of neglect or indifference.

GUIDING PRINCIPLES

The electric power problems confronting the Pacific Northwest can be fairly well identified and will be described shortly. What is at issue is their solutions. A systematic way to explore for ideal solutions and to assess their suitability can be found in the context of goals and objectives. What is it the region wants?

BPA's goals as described above remain worthy. But goals tend to be broad and general. They are often the kind of "motherhood" and "apple pie" maxims to which most everyone can subscribe, but which lack sufficient specificity to lead directly to solutions.

The following regional electric energy objectives contain a higher level of detail to help in the identification of ideal future policies under which BPA and the region as a whole might operate. Being more specific, however, means they may also be more controversial. They are, however, the product of an extensive environmental impact statement process, and extensive congressional hearings in Washington, D.C., and in the region. Additionally, the last four objectives represent specific provisions contained in recent legislative proposals.

1. Adequate Power Supply. The region should seek an environmentally acceptable and economically sound power supply which adequately balances electric energy supply and demand. BPA and regional utilities should provide system reserves necessary to insure a stable power supply.

2. Conservation as a Resource. Conservation should be viewed as an energy resource, all feasible cost-effective energy conservation should be encouraged, and conservation should be funded by ratepayers as an energy resource to reduce regional needs for additional generation.

3. Alternative or Renewable Resources. Where feasible and cost-effective, development of alternative or renewable resources should also be funded as a resource to increase regional energy supply and reduce regional needs for conventional thermal resources.

4. Cost-Based Rates. Cost-based wholesale power rates should be retained as the basis for establishing rates, but a marginal-cost test should be used to evaluate and fund conservation programs and alternative or renewable resources. Rates should be kept as low as possible for all ultimate consumers by utilizing cost-effective and feasible conservation, renewable resources, and conventional resources.

5. BPA Responsiveness. The regional orientation of BPA and its interaction with State, local, and public interests should be strengthened in order for it to respond better to regional needs, consistent with national policy goals and objectives.

6. Regional Power Supply Planning. Coordination of regional, State, and local power supply and transmission planning should be encouraged.

7. Regional Participation. A mechanism for the Pacific Northwest ratepayers, the States, local government agencies, utilities, environmental and other interest groups, and BPA to participate jointly in power supply and transmission planning should be provided. Means for effectively involving the general public in regional power planning should also be improved.

8. State and Local Retail Rate Control. The responsibility of State public utility regulatory commissions and public, municipal, and cooperative utilities to set retail rates for regional consumers should continue.

9. State Control of Sites. Present State control over siting of generating resources should be retained to enable States to exercise their responsibility for protecting the local environment and regulating utility resource development, consistent with regional and national energy policy goals and objectives.

10. One-Utility Transmission Development. Development of the regional integrated transmission grid based on the one-utility concept should continue.

11. Self-Reliance. The region's ratepayers should bear the full costs of the regional power system without subsidy.

12. Preference Clause. The preference clause should be preserved, as should the right of the public to form new public bodies and cooperatives.

13. Power Purchase Authority. BPA should first invest in feasible and cost-effective conservation and renewable resources and, if these resources are insufficient to meet projected demand, BPA should then be authorized to purchase the output of conventional generating facilities. Costs of acquiring all resources should be borne exclusively by ratepayers. In turn, the region's ratepayers' investment in the Federal Columbia River Power System should be used to back future regional investments in energy resources.

14. Extend Regional Preference. The principle of regional preference should be extended to include not only Federal hydropower but BPA-acquired regional non-hydroelectric power resources as well, so that only power which turns out to be surplus to regional needs (because of abundant streamflow conditions, for example) can be exported outside the region.

The One-Utility Concept

With more than 100 utilities in the region, varying markedly in size and resources, it would be painfully inefficient for each to do independently all the things it deems appropriate to ensure that its own loads are met. Careful analyses of alternatives have demonstrated that coordination of plans and actions, and integration of facilities as part of a comprehensive regional plan, is cost effective. It is also the most promising way to encourage and achieve effective energy conservation.

The 14 guiding principles listed above have this common thread running through them: to the extent feasible, electrical energy planning and decisionmaking, as well as day-to-day operations, should be coordinated. And, to the extent feasible, that coordination should include development of regional forecasts of electric energy demand, adoption and implementation of conservation programs, selection of generation technologies and mixes, generalized siting of energy facilities, and regional integration of power facilities. That is the "one-utility" concept. Among idealized prototypes, the one-utility concept, if achieved, is most likely to meet the region's goals and objectives, and solve its serious electric power problems.

Clearly, if there were only one regionwide electric utility serving the entire Pacific Northwest and if that single utility (1) owned and managed all of the region's electric energy resources, (2) had a public utility responsibility for meeting all reasonable loads without discrimination, (3) was obliged to keep its costs as low as possible, (4) had authority to implement conservation and acquire renewable resources, and (5) was required to provide for regional participation in its decisionmaking processes, it would greatly facilitate attainment of most if not all of the objectives enumerated above.

However, a single regionwide electric utility serving the entire Pacific Northwest is not a realistic prospect for the region. Without overlooking the advantages of pluralistic ownership; i.e., local control and competition, the "second-best" realistically achievable arrangement from a technical point of view is for all or most of the region's many utilities to plan and act as if they were one with respect to regional electric energy issues.

One compelling concept about which there is very widespread agreement is that whatever regional electric energy goals are to be met, they should be met in the most efficient way practicable. Under the "one-utility" concept, the region's power facilities, including conservation programs and renewable resources, would be operated as much as possible as though they were planned, owned, and managed by a single regionwide entity, with the highest practicable level of coordination and interutility cooperation. The conclusion is technically inescapable that the "one-utility" concept offers the greatest promise for minimizing power facilities, adverse environmental impacts, costs, and commitment of the Nation's scarce physical resources, and at the same time, for ensuring that the region's appropriate demand for electric energy, whatever that may be, is satisfied.

SETTING

Comprehensive Planning

The Pacific Northwest, consisting primarily of the States of Idaho, Oregon, and Washington, plus that portion of Montana that lies west of the Continental Divide, has approximately one-third of the total hydroelectric potential of the United States, more than any other region in the Nation. From the standpoint of electric power planning and development--past, present, and future--this unique characteristic, more than any other, has served to influence the development of the power supply system in the Northwest, distinguishing it from other regions of the country.

Until it became technically and economically feasible to build dams across the mainstem of the Columbia River, most of the water resource development in the Pacific Northwest proceeded on a relatively haphazard and uncoordinated basis. But as technology improved and the region's economy expanded, additional development of its water resources became progressively more attractive to farsighted planners. And it also became clear to them that comprehensive, rather than piecemeal, river basin development should be investigated and pursued. First, they saw that many of the potential hydro projects could be built to serve immensely beneficial multiple purposes and would be the least cost way to achieve those purposes. And second, they concluded that, rather than approach water resource development on a project-by-project basis, comprehensive development throughout the river basin could substantially increase overall benefits and yield optimum returns on investment. What was needed was a coordinated plan for the entire Columbia River basin.

Except for some modest interutility power connections, little if any coordinated planning occurred in the Northwest prior to 1927. In that year, the Corps of Engineers launched a comprehensive study of the development potential of the Columbia River basin in the United States. The study, called the "308 Report," recommended 10 major hydroplants along the mainstem of the Columbia River starting at Bonneville, 146 miles upstream from the mouth, and ending at Grand Coulee, 597 river miles above the mouth.

In addition to the proposals for mainstem projects, the "308 Report" recommended a plan to meet requirements for flood control, navigation, hydropower, and irrigation. Additionally, it recommended a number of storage projects for construction in the upper reaches of the basin. The "308 Report," published in 1932, was the first official plan for large-scale comprehensive development of the basin.

Construction of Bonneville Dam was begun by the Corps of Engineers in 1933, during the depths of the Great Depression. The next year, the Bureau of Reclamation began construction on Grand Coulee Dam. Both of these Federal dams were started as emergency public works projects.

By 1937, Bonneville Dam was nearing the stage of initial power production. Several legislative proposals were advanced in the Congress to provide for administration of the project. Some proposals would have placed responsibility for development of the entire river basin in the Bureau of Reclamation. Others would have vested the transmission and marketing functions, as well as project construction, in the Corps of Engineers. Still others would have established a Columbia Valley Authority similar to the Tennessee Valley Authority.

Because regional planners recognized that any administration of Federal hydroelectric projects in the Northwest should provide for a unified program of multipurpose development, and because there were conflicts as to which Federal agency, existing or new, should administer the projects, a compromise was struck by creation of a "provisional" agency within the U.S. Department of the Interior to market the power from Bonneville Dam (and subsequently from all Federal dams in the region, except for a small Bureau of Reclamation project--Green Springs--in southwestern Oregon). The new agency, created in 1937, was the Bonneville Power Administration (BPA). The Federal dams, however, continued to be built and operated by either the Corps of Engineers or the Bureau of Reclamation; BPA markets the power and recovers all of the power costs, including timely repayment of the Federal investment plus interest.

BPA completed its first transmission line from Bonneville Dam to the City of Cascade Locks, Oregon, in July 1938. Gradually, a Federal transmission network took shape as additional Federal generating units came on line and additional publicly owned, cooperatively owned, and investor-owned utilities, plus some electroprocess industries, became customers of BPA.

Pacific Northwest Electric Power System

As of January 1, 1978, the Pacific Northwest's rated electric generating capacity totaled almost 37,000 megawatts, of which approximately 79 percent was installed in hydroelectric projects. More than 14,250 of the 31,000 megawatts were installed in Federal hydroelectric plants, the output of which is marketed by BPA. Almost 10,000 of the total 31,000 megawatts consists of non-Federal hydroelectric capacity. The remaining approximately 6,500 megawatts consists of existing non-Federal thermal generating capacity, 80 percent of which is installed in five large generating projects--the Centralia coal-fired plant located between Portland and Seattle, the dual-purpose N-Reactor on the U.S. Department of Energy reservation at Hanford, Washington, the coal-fired Jim Bridger Units 1, 2, and 3 at Rock Springs, Wyoming (two-thirds of the output of which is used to meet Pacific Northwest loads), the coal-fired Colstrip Units 1 and 2 in Montana (half of which is used to meet PNW loads), and the Trojan nuclear powerplant 42 miles north of Portland at Rainier, Oregon. The remaining existing thermal powerplants in the Northwest are either new combustion turbines or new combined-cycle units used primarily for short-term peaking or during periods of poor water conditions, or small and relatively old steam and diesel units pressed into service only when the region is threatened with serious power shortages.

The construction of Federal multiple-purpose hydroelectric dams in the Pacific Northwest reached a peak in 1952 when 13 dams were under construction and has steadily declined since then. Presently, Grand Coulee pump generators 9 through 12 and Bonneville Dam Second Powerplant are under construction. Bonneville Second Powerplant will add 182 MW of average annual energy and 558 MW nameplate capacity (including fishwater units). Grand Coulee pump generators 9 through 12 will add additional (200 MW) peaking capability only. Cougar Additions, Strube Dam and generation, and Libby Dam Additions are scheduled for commercial operation from November 1985 to September 1986. McNary Second Powerhouse is authorized but no construction date is set.

However, the outlook for many more large hydropower projects is dim. While half of the power potential remains unharnessed, particularly on tributaries of the Columbia River, almost half of the unharnessed water power lies within wild and scenic rivers, wilderness, and recreation areas. Prospects are better for small hydro projects which make use of existing structures. The Corps of Engineers and the Water and Power Resources Service are conducting studies requested by Congress to assess the total available potential. The Corps of Engineers is in the process of screening this total potential to identify a list of projects which merit further study. The screening process is designed to pick out projects which appear to be economically feasible while meeting environmental tests. Further screening will yield a smaller list of projects which merit a high priority for early development.

The Corps of Engineers' role, with respect to the Federal Columbia River Power System, includes more than just power production. Their projects in the Federal Columbia River Power System were authorized as multipurpose projects of which hydropower is only one function. Other functions include: flood control, navigation, irrigation, recreation, and minimum streamflows. Therefore, the Corps of Engineers must take into consideration purposes other than power generation when scheduling the available water in the river system through their projects. The projects are planned, constructed, and operate in cooperation with the States and other Federal agencies to provide for maximum utilization of the resources. Further, Congress has directed that in those areas lying wholly or in part west of the 98th meridian, any such uses must not conflict with any beneficial consumptive use, present or future. Certainly one of the most common consumptive uses from the Columbia River System is irrigation. Accordingly, in the long-range planning studies, the Corps of Engineers, Bonneville Power Administration, and the Northwest Power Pool all assume this policy will continue.

In addition, a number of thermal powerplants, ranging from relatively small oil-fired combustion turbines to very large coal-fired and nuclear powerplants, with a combined capability of more than 13,000 megawatts, are scheduled for installation in the region within the next decade.

The Federal Columbia River Power System

The Federal Columbia River Power System (FCRPS) is comprised of three principal elements: (1) the hydroelectric generating projects constructed and operated by the U.S. Army Corps of Engineers and the Water and Power Resources Service (WPRS) within the Pacific Northwest region, (2) the electric transmission system constructed and operated by the Bonneville Power Administration, and (3) power acquired by BPA through exchanges and net-billing.

BPA, which became an agency of the new U.S. Department of Energy in October 1977 after being part of the Department of the Interior for its first 40 years, is the marketing agent for the power produced by the Corps and WPRS projects. BPA also acquires some shares of the capacity of thermal generating plants constructed by non-Federal publicly owned entities such as municipal electric utilities and joint operating agencies. BPA melds its acquired power with the Federal hydropower and markets the melded product wholesale to electric utilities, other Federal agencies, and certain (direct-service) industrial customers. BPA also "wheels" (transmits) power over its facilities for others.

BPA has always been obliged to repay the Federal investment in the FCRPS and to pay all FCRPS operating costs from revenues. However, prior to 1975, BPA had received all of its operating and capital investment funds by means of annual appropriations from Congress. BPA is now authorized to sell bonds to the U.S. Treasury to raise capital funds to finance the construction of new transmission facilities. And on behalf of the FCRPS, BPA is obligated by statute to set its power and wheeling charges at "the lowest possible rates to consumers consistent with sound business principles" that will fully repay any bonds it has issued and fully recover all of the costs to the Federal Government of generating, purchasing, transmitting, and marketing electric power, including the amortization of the Government's investment in power facilities, with interest.

The various statutes under which BPA operates require that preference and priority be given to public bodies and cooperatives in the sale of FCRPS power. The Bonneville Project Act, Section 4(a), states that: "In order to insure that the facilities for the generation of electric energy at the Bonneville project shall be operated for the benefit of the general public, and particularly of domestic and rural customers, the Administrator shall at all times, in disposing of electric energy generated at said project, give preference and priority to public bodies and cooperatives."

In 1978, BPA marketed power from 30 Federal hydroelectric projects to 147 customers in the Pacific Northwest--116 publicly or cooperatively owned utilities, 8 investor-owned utilities, 6 Federal agencies, and 17 direct-service industrial customers. For 98 of its utility customers, BPA is the sole source of power supply. BPA markets about one-half of the electric energy produced in the Pacific Northwest and provides about four-fifths of the region's electric power bulk transmission capacity.

BPA's transmission system consists of about 12,500 circuit miles of high-voltage transmission lines and 345 substations. The BPA transmission system constitutes America's largest high-voltage transmission network and is the "backbone" grid to which all interconnected utilities in the region are tied for reliability and economic efficiency. BPA also markets and exchanges electric power interregionally over the Pacific Northwest-Pacific Southwest Intertie, and in Canada over interconnections with utilities in British Columbia.

The First Three Decades (1937-68)

BPA's first three decades of operation, from 1937 to the mid-1960's, were by and large a period of abundantly available Federal power. BPA was generally able to meet the net requirements of all of its customers-- preference utilities, investor-owned utilities, and direct-service industries. BPA charged essentially the same rate to all these customers.

Two major developments occurred during this period of power abundance. First, voters in the State of Washington elected to establish many more publicly and cooperatively owned power agencies than were established in Idaho, Montana, or Oregon. For example, today about 57 percent of Washington State consumers are served by public bodies and cooperatives, while in Oregon, Idaho, and Montana, respectively, 20, 17, and 24 percent are served by public bodies and cooperatives. The choice at the time was based as much, if not more, on political ideology as on power costs since BPA had sufficient power to meet the needs of investor-owned utilities, too. Moreover, larger utilities that built additional generation of their own were often able to do so at relatively low costs that were more or less equivalent to BPA's rate of power.

Second, starting in 1940, direct-service industries--principally aluminum reduction plants--came to the region. By the end of World War II, 5 aluminum plants, 4 of which were established during the war to meet war production goals, were operating in the Northwest. Today there are 10 aluminum reduction plants, the newest of which went into operation in 1971. In addition, major expansions occurred from 1950 through 1968 in existing plants. An important characteristic of the direct-service industries is that they provide a market for interruptible power which in earlier years would have been wasted.

There is a distinction between power planning and actual power operations. The power system is planned so that, ideally, total demand for electricity in the Pacific Northwest is met, even under critical water conditions. The portion of BPA's industrial loads that can be contractually interrupted is included in that total demand. Under actual power system operations, however, the 25 percent interruptible portion of BPA's industrial loads can be and has been curtailed at any time, for any period, and for any reason. In addition, a significant portion of the remaining direct-service industrial load is available as power system reserves.

The Hydro-Thermal Power Program

Until the mid-1960's, virtually all of the electricity generated in the Pacific Northwest was hydropower. Regional planners and engineers had long recognized, however, that there was a limited amount of economically feasible and environmentally acceptable hydro energy potential. As that potential was progressively developed and as the region's population, economy, and demand for electric energy continued to grow, planners and engineers concluded that thermal powerplants would have to be built to supplement dams in supplying electricity to meet growing loads. Additional low-cost peaking power could continue to be obtained by installing additional hydro generator units, primarily at existing dams, and some smaller-scale hydro energy potential could also be developed. But the region's power system would gradually change from virtually all-hydro to mixed hydro-thermal.

The concept of blending hydro and thermal resources together in an optimum fashion was not new. Its genesis dated back many decades. The idea fulfilled the predictions of regional planners and engineers in the Pacific Northwest and elsewhere who, since the early 1920's, recognized the advantages of integrating hydro peaking capacity with thermal energy. In 1955, the United States Senate Public Works Committee directed the Corps of Engineers to review its "308 Report" by restudying the Northwest's hydropower potentials "as part of a combined hydro-thermal system." Complying with that congressional directive, the Corps published a comprehensive revision of the "308 Report" in 1958 which spelled out the concepts of joint operation of hydro projects with thermal projects. These concepts were developed into an action program by the Joint Power Planning Council in 1968 called the Hydro-Thermal Power Program (HTPP).

While some of the details of the Hydro-Thermal Power Program are complicated, the essential features are quite simple. Basically, it was designed to fulfill two key objectives. First, it should permit development of an adequate and reliable supply of power to meet future Northwest electricity demand at the lowest practicable cost. Second, the long-range plan should achieve optimum combination of the region's generating and transmission resources--hydro and thermal, Federal and non-Federal, public and private, existing and planned. Even before the program was approved, it was also assumed that an optimal future power system, which would be able to meet electric energy demand with (1) substantial flexibility as far as plant siting is concerned, and (2) the most efficient and least use of generation and transmission resources, could be structured to pay maximum effective attention to protection of the environment.

To meet these twin objectives, the region's utilities and the Federal Government would plan, build, and operate the region's entire electric system as though it were under a single ownership--the "one-utility" concept. Thermal power would be integrated with hydropower. Markets would be assured for the output of the largest and most economical thermal plants. Bulk transmission, peaking capacity, forced outage reserves, reserves for unanticipated load growth, and, when available, surplus hydro energy for thermal fuel displacement would be primarily Federal responsibilities. Building the most economical thermal powerplants timed, sized, and located to meet regional needs (instead of just the needs of the owners), and providing essential low-voltage transmission and distribution would be the key responsibilities borne by non-Federal utilities. An unprecedented high level of interutility cooperation would be the goal.

Phase 1 of the HTPP (1968-73)

The plan was conceived by the Joint Power Planning Council, which was organized in 1966 and consisted of 108 participating Pacific Northwest utilities and BPA. The plan was unveiled on October 22, 1968, and a year later, on October 27, 1969, was approved by the national administration. Implementation of the program was initiated by Congress in the Public Works Appropriations Act of 1970. The Act approved net-billing, the principle whereby BPA would acquire some of the publicly financed shares of the output of non-Federal thermal powerplants (an arrangement which is explained below). Authority to implement the remainder of the program through 1981 (Phase 1) was provided in the Appropriations Act of 1971. Thus, the Hydro-Thermal Power Program was launched. A list of the plants included in the HTPP are listed on page IV-31.

Perhaps the most important feature of Phase 1 of the HTPP is that BPA acquires some of the output of some of the proposed thermal powerplants through "netbilling." Under this arrangement, preference utilities (public bodies and cooperatives) have built and are building portions or all of certain thermal powerplants to meet their future power requirements. They furnish the output to BPA. BPA in turn bears the preference customers' shares of the costs of those powerplants, acquires the power output, and blends it with Federal hydropower. BPA then sells the blended product to its various customers, including the participating preference utilities. It "pays" those utilities for their shares of the powerplants' costs by reducing their annual bills for power purchases and other services from BPA. Three goals are accomplished: (1) financing costs for preference utilities to build powerplants are reduced (through lower interest rates) because of commitments by BPA to acquire output and pay costs, (2) BPA's power supply is augmented, and (3) costs are distributed to all consumers of BPA power.

Two unexpected events occurred to limit use of this approach to meet regional power demands. First, unanticipated skyrocketing costs for construction of new thermal powerplants began to exhaust BPA's netbilling capability earlier than anticipated. This occurred because thermal powerplant costs have beed increasing much more rapidly than BPA wholesale power rates, which are based on blended hydro-thermal costs. If more thermal powerplants were to be built in addition to the four which are already covered under net-billing, the sums that BPA would be obligated to credit against preference customers' billings (reflecting thermal projects' costs) would exceed the sums they owe BPA (reflecting BPA's rates for blended hydro-thermal power). An unsatisfactory solution would be to hike very substantially BPA's wholesale power rates to participating preference utilities.

Second, and perhaps most importantly, a 1973 Treasury Department and Internal Revenue Service ruling prevents BPA's preference customers from using tax exempt bonds to finance additional thermal powerplants from which BPA would acquire more than 25 percent of the output, thereby eliminating an important financing cost advantage. Federal law provides that the interest payments from bonds issued by non-Federal public bodies are ordinarily not taxable, hence bondholders are willing to settle for a lower interest rate than would customarily be payable on taxable bonds of comparable risk. The 1973 ruling effectively ended the use of tax exempt bonds for construction of powerplants where the output would be acquired by BPA.

Although costs were the coup de grace for extending Phase 1, there were other complications as well. First of all, there are more than 100 independent, resolute, and strong-minded utilities in the region involved with the Federal Government in planning, building, and operating a coordinated regional power system. Coordinated effort is complicated by the fact that thermal powerplants introduce new and in some respects more serious environmental problems than the region has known in the past, and while none of these problems is necessarily insoluble or unmanageable, most require expensive control technologies, commitment of resources, and continuous monitoring and assessment. New thermal powerplants also produce electricity at costs many times greater than the costs of existing hydroelectricity, thus there is a natural competition among prospective consumers to gain a "proper" share of the low-cost hydroelectric component of the region's melded power base. Matters are complicated still further by the fact that the leadtime for construction of thermal powerplants is very long (in excess of 10 years), subject to slippage but pitilessly resistant to compression.

Finally, Phase 1 was inaugurated and implemented during a time when sharply higher energy prices and other factors infused load forecasting with growing uncertainties. Where BPA and the region's utilities were once able to develop forecasts of electric energy demand with breathtaking accuracy, the decade of the 1970's introduced qualms and significant revisions of earlier load forecasts. The 1970's also saw growing interest in the potential of new and alternative technologies. The state-of-the-art of new technologies is largely experimental at present; therefore it is difficult to gauge today the extent to which emerging alternative energy technologies will be applicable and suitable for deployment 10 or 20 years from now.

Phase 2 of the HTPP (1973-75)

Phase 2 was a short-lived attempt to overcome the elements that prevented Phase 1 from proceeding further--the approach of exhaustion of net-billing capability and the tax ruling. Under Phase 2, preference utilities, individually or jointly, were to build some of the new thermal powerplants, and individual preference utilities would buy the power output at actual costs. BPA was to act as the agent for public bodies and cooperatives and undertake arrangements to make it a workable scheme, short of paying for the new thermal powerplants either by net-billing or other means. These arrangements were to include BPA selling temporary powerplant surpluses, "shaping" generation to fit loads, and providing transmission and reserves.

A key element of Phase 2 was the willingness of preference utilities to forego their preference claims to Federal power now being sold to BPA's direct-service industrial customers (DSI's) when present contracts expire, thus permitting new long-term, power sales contracts to be signed with the DSI's. In return, the DSI's would provide the region with greater electric power reserves than those which the industries already provide, by virtue of the interruptible and modified firm power provisions of their contracts with BPA.

Two Federal court decisions, one in 1975 and the other in 1977, together with further skyrocketing costs, brought the regional aspects of Phase 2 to an abrupt halt and it was abandoned. (These decisions and their relationship to this Final Role EIS will be described shortly.)

The inability of BPA and power entities in the region to carry out portions of their responsibilities under the Hydro-Thermal Power Program in a timely manner injected great uncertainties into the region's electric power planning process. That inability to perform as expected resulted in part from the events and complications which limited use of the Phase 1 approach and the Federal court decisions which halted Phase 2.

The Current Regional Effort

Pacific Northwest utilities continue to cooperate in the planning and operation of the regional power supply system. Existing facilities are coordinated through the Northwest Power Pool and the parties to the Pacific Northwest Coordination Agreement. The Northwest Power Pool provides informal coordination of the FCRPS with the operations of the major public and private utilities in the region; the Coordination Agreement formalizes coordination to maximize the efficiency of the operation of the region's hydro resources. Individual utility load and resource forecasts are assembled into a regional forecast under the auspices of the Pacific Northwest Utilities Conference Committee (PNUCC), an organization of all of the public and private utilities in the West Group Area of the Northwest Power Pool, and the regional forecast is used as a basis for planning resources and preparing for potential deficits.

At present, power resources of the West Group Area consist of 29,505 megawatts of hydroelectric capacity, providing 12,037 average megawatts of firm energy, and 2,773 megawatts of capacity and 2,469 megawatts of firm energy from large thermal powerplants. Small amounts of power are also supplied by combustion turbines and other resources. Regional generating plants are shown in Figure IV-1. In addition, there are 1,708 megawatts of hydro peaking capacity under development which will also supply 44 megawatts of firm energy and 7,397 megawatts of thermal capacity in the process of construction with an expected firm energy output of 5,549 average megawatts.

Resources beyond those currently under construction are less certain. The West Group Area forecast takes into account thermal generating resources which could provide 5,936 megawatts of peak capacity and 4,452 megawatts of firm energy, but until these plants receive all of the permits necessary to allow construction, their completion cannot be regarded as a certainty. In anticipation of continued load growth in the region, utilities continue to plan other conventional resources which do not yet appear in the West Group Area forecast. Efforts are also underway to investigate the potential of cogeneration, biomass, geothermal energy, wind energy, and solar energy for providing power in the region, and to develop the information necessary to achieve the potential of these resources.

The regional transmission system consists of approximately 16,000 miles of high-voltage (230 kV or higher) transmission lines. The basic structure of the transmission grid (as shown in Figure IV-4) is complete, but there is a continuing process of maintaining existing lines, upgrading portions of the system, and adding new sections of line to enable the system to adequately provide for the region's transmission needs. Most high-voltage transmission lines are constructed by BPA, but utilities also independently undertake transmission developing in some cases. BPA and the region's utilities continue to cooperate to make efficient use of the regional transmission grid.

Other Environmental Analyses

This Final EIS examines a proposed program to make optimum use of BPA's existing authorities in the operation of the future power system. The proposal is evaluated in the context of BPA's policy or mission, to help assure a viable electric energy system in the Pacific Northwest, following a plan to do this through adherence to the one-utility concept. The proposal does not select any project-specific future resources of technologies to be developed or acquired. Accordingly, the Role EIS is regarded as a "tiered" EIS designed to discuss policy, planning, and programing matters and is not intended to present the level of detail of a project or action-specific EIS. Project or action-specific proposals will be assessed individually as they are formulated.

This "tiering" concept, which is encouraged by the Council on Environmental Quality (CEQ) in their NEPA regulations (40 CFR 1502.20 and 1508.28), provides for a focus upon the issues ripe for decision and their impacts. Currently in the Pacific Northwest the central issue is the selection of an alternative regional power planning process; legislative proposals being circulated in the region advocate the adoption of various alternative regional power planning processes.

The actions permitted BPA under the proposal include the continued construction of transmission facilities, the sale of power, the setting of wholesale rates, the provision of services (wheeling and load shaping), and development of pilot programs and demonstration projects in the areas of conservation and renewable resource development.

As in the past, BPA will, at the time a proposal originates, continue to prepare and circulate action or site-specific environmental documents or statements on major transmission proposals (FY 1980 Construction Program EIS), power sales contracts (Alumax and Addy EIS's), wholesale rate increases (FY 1979 Wholesale Rate Increase EIS), and demonstration of pilot programs (wind generation).

Environmental impacts of actions such as new generation projects prepared independently by the region's utilities would be assessed as required by State environmental policy acts (SEPA) in the case of Washington and Montana, or by the Energy Facility Siting Council in Oregon. If these actions were to become "federalized" by integration into the BPA main grid, then BPA would review any previous environmental analyses and either accept these analyses as adequate or conduct additional analyses as necessary.

However, should BPA acquire new authorities that would require it to formulate a new regional power program, providing for the acquisition of project-specific resources or generation technologies, then both the program and the projects would be the subject of additional environmental analyses.

JUDICIAL DECISIONS

On September 15, 1975, the U.S. District Court of Oregon ruled that the Bonneville Power Administration was obliged to prepare an environmental impact statement (EIS) in connection with a proposed modification of a contract to provide service to a proposed aluminum reduction plant. The modification sought to change the point of power delivery from Warrenton, Oregon, to Umatilla, Oregon, increase the reserves to be provided by the industry, and extend the contract term if other similar contracts were extended. A few months before that decision was rendered, a draft of an earlier EIS effort entitled "BPA Participation in Regional Interutility Cooperation" had been distributed for review. The September 15, 1975, decision specified, however, that the EIS was to include aspects of the Hydro-Thermal Power Program associated with the modified contract.

In response to that decision, BPA embarked on the preparation of a site-specific EIS for the aluminum plant in question (Alumax) and interlinked that EIS with a comprehensive "Role EIS" covering all of BPA's functions, not just its participation in interutility cooperation and not just aspects of the HTPP associated with a single proposed plant. Preparation of the comprehensive Role EIS was already underway and its linkage with the site-specific Alumax EIS was deemed appropriate because of the complex and more or less inseparable interrelationships between BPA, regional utilities, BPA's industrial power sales activities (including service to the proposed new aluminum plant), and the development of the regional power supply system.

On July 1, 1977, the U.S. District Court of Oregon ruled on another suit, brought by the Natural Resources Defense Council, that BPA was obliged to prepare a "programmatic" EIS on its long-range plans involving the development of electric generating facilities in the Pacific Northwest, again not just limiting the EIS to aspects of the HTPP associated with a single plant. In effect, this 1977 judicial decision ratified BPA's earlier decision to undertake preparation of a comprehensive Role EIS.

In 1968 and 1969, prior to enactment of the National Environmental Policy Act (NEPA), Phase 1 of the Hydro-Thermal Power Program was adopted by the region's utilities and BPA, and approved by the national administration. That program was designed to provide an adequate power supply for the Northwest through 1981. Subsequently, after enactment of NEPA, the extension of the Hydro-Thermal Power Program that came to be known as Phase 2 was agreed upon by BPA, its industrial customers, and the region's utilities. Phase 2 was designed to provide for additional generating capacity to satisfy the region's power needs through 1986 and beyond. It was toward the post-NEPA Phase 2 that the 1977 judicial decision addressed itself most particularly.

The 1977 court decision held that "BPA plays a pivotal role in HTPP and Phase 2" and it required that the kind of comprehensive and programmatic

EIS upon which BPA had already embarked must be prepared as a condition to satisfy NEPA if the HTPP were to be pursued. Specifically, the 1977 decision states that BPA is required by NEPA to prepare an EIS on all aspects of Phase 2 of the Hydro-Thermal Power Program or any followup program.

Although Phase 2 of the HTPP has been abandoned, it is recognized that similar cooperative arrangements are likely to occur within the region if regional power problems persist and as they become more serious. It is with this recognition in mind that this Role EIS has been prepared: to examine alternative planning arrangements many of which may be similar to the HTPP in concept and design.

In 1977, at nearly the same time as the NRDC vs. BPA decision, a draft of the Role EIS was published and distributed widely for review and comment. That multi-volume draft carried an imposing title: "The Role of the Bonneville Power Administration in the Pacific Northwest Power Supply System, Including Its Participation in the Hydro-Thermal Power Program: A Program Environmental Statement and Planning Report." The document measured more than 7 inches thick and consisted of five volumes plus a Summary Report.

A large-scale citizen involvement program, including workshops and public meetings, unprecedented in the region, was conducted to familiarize the public with the complex and technical issues confronting energy planners. The program encouraged widespread review and comment on the draft, provided information to the public of the regional energy issues, and brought out voluminous citizen input on the content of the original Draft EIS.

In response to public and agency comments, departmental review, and the recent CEQ regulations for implementation of the procedural requirements of the National Environmental Policy Act, the Role EIS was reissued as a revised draft for additional public and agency comments.

RELATIONSHIP OF THE ORIGINAL DRAFT ROLE EIS TO THE REVISED DRAFT AND FINAL ROLE EIS

Aside from the important reorganization of the EIS into a more manageable size and format, the Revised Draft and Final Role EIS were significantly modified from the original DEIS, most particularly in response to reviewers' comments and also in response to rapidly changing circumstances including enactment of a National Energy Act and serious congressional efforts to enact major legislation affecting the Pacific Northwest's regional power system. Among other things, that proposed legislation also reflects national energy policy goals which assign higher priorities to energy conservation and to the development of renewable generation resources.

With respect to reviewers' comments on the original Draft Role EIS, inspection indicated four recurring comments, each of which has been addressed in this Final Role EIS:

1. Some reviewers felt that the original Draft Role EIS lacked an explicit action or program proposed by BPA. Based on comments received, some readers felt that the draft did not clearly focus upon either a recommended action from among the array of alternatives or that it did not identify the precise characteristics, including environmental impacts, of a hydro-thermal power program.

2. In the original Draft Role EIS, various environmental impacts to various alternatives were presented in various appendices. The intent was a "building-block" approach but some reviewers felt that this resulted in a diffusion of environmental impacts and alternatives, making comparison difficult. They claimed that this reduced the usefulness of the document as a decisionmaking tool in assessing alternatives and their impacts.

3. The original Draft Role EIS did not define a discrete and manageable set of alternative actions. Instead it assumed an almost infinite array of alternatives, both for the region and for BPA. While these alternatives were not criticized as being unrealistic, some reviewers felt it made it difficult to use the document in the selection of an option of choice. A preferred tack, and one that many felt would have enhanced the usefulness of the document for decisionmaking purposes, would have been to identify a limited set of reasonable alternatives (and their associated environmental impacts) that bound the likely options that are available to the region and to BPA.

4. Although there is a good deal of controversy over how much electric energy demand can, as a practical matter, be modified by implementation of energy conservation programs, the original Draft Role EIS was said to have given inadequate consideration to that potential. It would seem useful to readers and decisionmakers alike to be able to

identify a maximum credible regional and BPA energy conservation scenario, carefully distinguishing between what is theoretically possible and what is realistically achievable. That would provide a gauge of the extent to which realistic and cost-effective conservation offers genuine alternatives to large central-station generation scenarios.

Other criticisms and comments received covered an array of ideas including some that might be categorized as fanciful and unrealistic but also many others which were imaginative and useful and which represented genuinely constructive criticisms. However, the most important perceived deficiencies were the four enumerated above. In every case, a diligent effort was made to carefully assess each comment received and to address the matter appropriately in the Revised Draft and Final Role EIS.

THE BPA PROPOSAL: CRITERIA FOR SELECTION

It was earlier mentioned that one of the perceived deficiencies in the BPA's Draft Role EIS was lack of an explicitly identified BPA proposed action or program among the numerous alternatives discussed. Among other things, the Revised Draft Role EIS more clearly identified such a proposal. It will be described shortly.

At the time the Revised Draft Role EIS was being prepared, potentially farreaching Northwest power legislation was being considered in the Congress. If that or similar legislation is enacted, BPA's authority and responsibilities would be very significantly altered.

One of the proposed bills, originally introduced in the 95th Congress (S. 3418 and H.R. 13931) as the "Pacific Northwest Electric Power Planning and Conservation Act," has been reintroduced in the 96th Congress as S. 885 and H.R. 3508. This legislation has been designed to address and solve the electric power problems confronting the Pacific Northwest. This proposed legislation was conceived on the basis of a general, although not universal, regional consensus. The proposed legislation was originally introduced in both houses of Congress by leading members of the Northwest congressional delegation, and was the subject of congressional hearings both in Washington, D.C., and across the region. As a result, numerous amendments were offered to improve it. The legislation was endorsed in principle, although by no means in every detail, by the national administration. It was not, however, an administration or BPA bill.

Another legislative proposal was put forward by Representative James Weaver of Oregon's Fourth Congressional District. His bill, the "Northwest Renewable Resources, Conservation, and Energy Planning Act" (H.R. 4159), proposes alternative mechanisms for resolving regional power issues.

Neither BPA nor any other executive branch agency can properly conjecture on the final outcome of a proposal before Congress which is not an administration proposal and the enactment of which is speculative and prospective. On the other hand, it would be disingenuous to ignore proposed legislation and, by implication, pretend that it does not exist. It is much too important. And it is not at all implausible to assume that it or a variant thereof might sooner or later be enacted.

The formulation of a BPA proposal was additionally influenced by many comments on the Draft Role EIS which urged selection of a proposal which was more specific-action oriented and with more emphasis on energy conservation than had appeared in the original draft. In view of these circumstances and in response to such comments, a number of selection criteria were established, to wit:

1. The BPA proposal should conform with executive agency protocol; hence, it should not depend on the speculative outcome of any pending legislation not proposed by BPA or the national administration.

2. The BPA proposal should be based essentially on the exercise of existing legislative authority, a known and available quantity.

3. The BPA proposal should be identified with more precision and more detail, without ambiguity.

4. The BPA proposal should be realistic; it should represent a plausible outcome.

5. The BPA proposal should have been encompassed within the original Draft Role EIS, the predecessor to this document.

6. Within existing legislative authority and to the extent possible, BPA should adopt policies that will support the goal of planning and operating the regional power system under the one-utility concept.

7. The BPA proposal should include a vigorous energy conservation policy that is realistic and feasible under existing legislative authority.

8. In recognition of the dynamic setting within which future regional power plans and programs must be executed, the BPA proposal should allow for endorsement in principle of additional prospective legislative authority that would (1) reinforce and strengthen the likelihood of achieving the goal of planning and operating under the one-utility concept, (2) provide additional tools to achieve regional electric energy conservation, and (3) respect existing broad institutional arrangements and political realities.

In the absence of selection criteria, any number of alternatives might be regarded as candidates for the BPA proposal. The range extends from one extreme in which new Federal legislation would be enacted to significantly reduce BPA's role in the region to another extreme in which new Federal legislation would create a regional power authority involving large-scale alterations in existing institutional arrangements. Within these two extremes are an almost infinite array of possibilities, the two most realistic and likely of which are (1) energetic utilization of existing legislative authority, and (2) new legislative authority along the lines of proposed legislation introduced in the 95th Congress. It is the former of these two alternatives that has been selected as the BPA proposal, with an added feature allowing for endorsement of additional legislative authority that would further improve attainment of the one-utility concept and energy conservation objectives.

The most compelling reason for selection of existing legislative authority as the framework within which the BPA proposal should be structured is that it is a known and currently available quantity, a course of action that can be implemented with a high degree of certainty. Power planning decisions in the region await resolution. Time marches on. Congress may or may not act on proposals for new legislation. The potential for serious power shortages looms on the horizon. Uncertainties about the future allocation of Federal power resources interfere with planning efforts. Lawsuits are pending. A kind of paralysis and malaise has overtaken the decisionmaking process. However effective some legislative proposals might be in overcoming the region's power planning problems, what proposed legislation might ultimately look like or when, if ever, it would be enacted, cannot be accurately predicted.

In this setting of large uncertainties it is better to develop an optimum program within a known framework (existing authority) than to do nothing at all or to rely on abstractions and speculations which may or may not materialize. The BPA proposal is straightforward and simple: proceed expeditiously to do the best that can be done under existing authority to solve the region's energy problems. If, after such a proposal is adopted and implemented, something conceptually and functionally superior is provided by way of new Federal legislative authority, BPA and the Northwest can be expected to take full advantage of its provisions. If, on the other hand, BPA and the region are left with no more legislative authority than at present, at least the best will be made of the circumstances.

In the meantime, this Final Role EIS does not ignore the alternative of regional power legislation. First, as has been stated, the BPA existing authority proposal allows for endorsement in principle of new complementary authority. Second, to be as forthright as possible and to provide the public and decisionmakers with a full understanding of the implications and potentials encompassed by the proposed legislation, that alternative will also be described (as a "preferred" or "ranking" ancillary candidate), along with three other alternatives, in the main body of this Final Role EIS (i.e., in terms of actions and impacts). The key features of that ranking alternative will also be arrayed in this overview alongside the features of the BPA proposal. Thus, a side-by-side analysis of the two most likely or realistic choices will be facilitated.

THE BPA PROPOSAL: KEY ELEMENTS

The BPA proposal is predicated on several key assumptions:

1. BPA will operate under its existing legislative authority.

2. BPA rates will be set at a level that will fully recover all costs of operating and constructing the Federal Columbia River Power System (FCRPS) including the costs of acquired power and timely repayments of the Federal investment, plus interest.

3. To the extent feasible within existing authority, BPA will implement new programs and/or modify existing programs that are calculated to move closer towards achievement of the one-utility concept.

4. Within existing authority, BPA will expand its energy conservation program and its public involvement program as much as it appropriately and feasibly can.

5. The high level of interutility cooperation that has been forged by power entities in the Pacific Northwest will be maintained.

6. BPA will endorse, in principle, proposals that enhance the prospect of achieving the one-utility concept, including additional authority for implementation of regional energy conservation programs.

7. BPA will continue in its role as coordinator for interregional transmission expansion opportunities.

The BPA proposal can be conveniently described in terms of eight areas of activity: (1) customer services, (2) transmission planning and services, (3) power planning, (4) conservation, (5) sources of power, (6) sales, (7) rates, and (8) public involvement. It is described in detail in Chapter III of this Final Role EIS.

With respect to (1) customer services, upon request BPA will continue to integrate new and existing non-Federal generating resources into the FCRPS in order to facilitate regional coordination of generation and transmission. All BPA costs would be borne by the beneficiaries of its services. The specific customer services that BPA would offer would include load factoring, forced outage reserves, load growth reserves, trust agent functions, resource information clearinghouse services, and miscellaneous services.

With respect to (2) transmission planning and services, BPA would continue to plan, build, and operate its transmission system in coordination with the region's utilities to reflect the one-utility concept. BPA would continue to provide transmission services such as wheeling non-Federal power, transmission of excess non-Federal generation capacity over existing lines, short-term transfers of nonfirm energy and capacity if and when sufficient transmission capacity is available, and point-to-point transfer of power over its facilities when excess transmission capacity is available.

With respect to (3) power planning, BPA would make maximum use of existing authorities in implementing, coordinating, and facilitating regional power planning to ensure optimum economic efficiency in the design and operation of the regional power system. Power planning functions would include development of planning assumptions, load forecasting, preparation of an annual power planning document, identification of resource sites, and cooperative activities.

With respect to (4) conservation, BPA would proceed with conservation efforts making maximum use of present authority while also being mindful that new legislation might allow for enlarged efforts to achieve greater conservation results. BPA would follow a policy designed to achieve as much cost-effective and feasible regional electric energy conservation savings as is practicable. That policy is described in greater detail in the main body of this EIS.

With respect to (5) sources of power, BPA would not acquire any significant amounts of new non-Federal resource capability beyond that provided for under existing agreements but would continue to offer FCRPS services to integrate new regional resources into the system. BPA would encourage development of cost-effective and feasible renewable resources including additional hydro and unconventional resources, and would play an expanded role in the investigation and assimilation into the power system of such resources.

With respect to (6) sales, preference and priority for public bodies and cooperatives would continue. As existing power sales contracts expire, BPA would have to reallocate its limited power supplies in a fashion that accords with existing legislation. A proposed BPA power allocation policy was announced in 1979. Regional power legislation would likely obviate the need for reallocation.

With respect to (7) rates, new wholesale power rates were made effective December 20, 1979, satisfying BPA's legal obligation to produce sufficient revenue to recover all of the costs of producing and transmitting power including timely repayment of the Federal investment in the FCRPS plus interest, and of making BPA power available at the lowest possible cost consistent with sound business principles.

With respect to (8) public involvement, BPA would maintain and, where feasible, expand public participation in its policy formulations and in regional power planning in terms of formal requirements such as notice, review, and comment, and in terms of other nonrequired procedures such as workshops, mailings, public meetings, hearings, and other mechanisms that ensure that the public is given an adequate opportunity to consider proposals, express comments, and have those comments carefully considered.

In addition to the BPA proposal, there is assumed a consistent or complementary regional structure that would provide for the related activities of the non-Federal sector of the Northwest regional power system. Although BPA would assist in the integration of new resources into the regional power system, many utilities would be responsible for their own load forecasting and resource acquisition. Presumably, as BPA power allocations become insufficient, existing and new preference customer utilities would seek new energy resources of their own. Investor-owned utilities would also be responsible for meeting load growth on their systems through conservation or other resources. BPA direct-service industrial customers would have no assured long-term power supply upon expiration of their present contracts with BPA; what those firms might elect to do as a result is conjectural.

The responsibilities of State and local governments for energy facilities siting would remain unchanged as would the regulatory authorities of State agencies except as modified, if at all, by new State laws or as required by new Federal legislation.

The regional complement assumes continuation of the cooperative agreements (e.g., the Northwest Power Pool, the Pacific Northwest Coordination Agreement, the Columbia River Treaty, etc.), assumes there will be incentives for utilities to enter into multiparty construction agreements to capture economies of scale and other benefits, and assumes that the Pacific Northwest Utilities Conference Committee or some similar entity comprised of regional utilities would continue to participate in identifying the need for and characteristics of proposed regional resources.

ALTERNATIVES

In addition to the BPA proposal, this Final Role EIS identifies four alternatives. The BPA proposal and all four of the alternatives are described in detail in Chapter III of this document. The key elements of three of those alternatives--Alternatives 1, 2, and 4--are strictly described here. Because Alternative 3 has received much more intensive and widespread attention than any of the other three, it is deemed the ranking alternative and is treated separately in the next section of this overview to facilitate a side-by-side comparison to the BPA proposal.

Alternative 1--Legislation Reducing BPA's Role in the Region. Under this alternative, BPA's existing authority, particularly with respect to transmission construction, would be significantly reduced through repeal of portions of the Federal Columbia River Transmission System Act of 1974. Under such use restrictions, the Federal transmission system would not be available to facilitate regional planning involving non-Federal power. Except for Federal projects, BPA would have no responsibility to provide additions to the Federal transmission system. The regional structure depicted is one where resources and transmission needs within the region are resolved through independent effort by diverse utility interests.

Alternative 2--Existing Authority; BPA's Role Declines Relative to the Region. Under this alternative, no new legislation, either reducing or expanding BPA's operations, is considered and no dynamic change from past practices is contemplated. Differing from Alternative 1, this alternative would allow for BPA construction of additions to the Federal transmission system as needed to integrate some non-Federal generation. But, because of BPA's diminishing role over time in relation to the region as a whole, this alternative assumes the formation of one or more "mutual operating agencies" to supplement some collective services now provided by BPA, including transmission and scheduling.

Alternative 4--New Authority; Regional Energy Commission. Under this alternative, which is based upon elements of the Weaver Bill, a Regional Energy Commission with broad authority to determine regional energy policy would be established through legislation and, in cooperation with BPA and regional non-Federal utilities, would provide integration, pooling, and marketing of all the electric energy in the region. Under the direction of the Regional Energy Commission, BPA would become the energy wholesaler for the Pacific Northwest offering full requirements contracts to all utility and other participants in the region.

ALTERNATIVE 3: THE RANKING ALTERNATIVE

Regional power planning problems, described earlier, have been increasing in both abundance and severity. Those problems triggered development and presentation of several legislative proposals to Congress. Since the Federal Government plays such a large role in the scheme of things and since BPA is the Federal Government's power marketing agency in the Northwest, it is no surprise that all of the legislation that has been introduced would, if enacted, substantially impact BPA's role in the region.

Legislation entitled "The Pacific Northwest Electric Power Supply and Conservation Act" (S. 2080 and H.R. 9020), which was developed under the auspices of the Pacific Northwest Utilities Conference Committee (PNUCC) with the participation of BPA's direct-service industrial customers and others, was introduced in Congress in September 1977. Under this legislation, (1) a new regional utility organization with various power planning functions would have been established, (2) an energy conservation program with strong incentives would have been mandated, and (3) BPA would have had increased authority to purchase power from non-Federal powerplants and sell that power and Federal system power at three different rate levels. The legislation would have authorized but not obliged BPA to purchase and then supply the future power requirements of all of the region's utilities and existing BPA direct-service industries requesting that service.

Legislation was also introduced in that session of Congress by Oregon's U.S. Representative Jim Weaver to create a "Columbia Basin Energy Commission" (H.R. 5862). The Commission would have determined regional electric energy policy, prepared load/resource forecasts, balanced electric energy demand and supplies, established BPA rates and terms for the acquisition, sale, and disposition of electric energy by BPA, and, in cooperation with BPA and non-Federal utilities, provided for generation and purchase, integration and pooling, and marketing of all Pacific Northwest electric energy. Within that context, BPA would have been responsible for implementing the Commission's decisions to acquire, pool, transmit, and market electric energy generated in the Pacific Northwest. The lowest cost BPA energy would have been made available for "use of the general public, domestic and rural," and for city, county, and State government uses. The remaining BPA energy would have been available to serve all other regional electric energy demands.

Many field hearings were held on these bills by both the U.S. Senate and House of Representatives. Those hearings showed that while the PNUCC proposal enjoyed support among most utilities and electroprocess industries, some utilities opposed its allocation provisions. Many nonutility interests also opposed the bill because of its power purchase provisions, anti-trust problems, and a perceived lack of emphasis on conservation and public involvement. The "Weaver Bill" was supported by many conservation and environmental groups, but it was opposed generally by the utility industry and by some nonutility interests due to its sweeping alterations in existing institutional arrangements. Neither of the bills was able to generate a consensus in the region.

The hearings did demonstrate, however, that regional power legislation was needed. Several points were made clear:

1. Failure to pass legislation expeditiously could trigger implementation of Oregon's Domestic and Rural Power Authority (DRPA) along with an almost certain prospect for paralyzing litigation to follow. However, the Oregon legislature has amended the legislation authorizing DRPA, postponing its effective date from March 1979 to March 1981.

2. Other lawsuits are already in process and, no matter what their outcome, they are almost certain to be appealed.

3. BPA will issue its proposal for the allocation of existing Federal power and, following consideration of public comments on the proposal, BPA will establish its final allocation policy in 1981; that policy may also be taken to court where it would probably be tied up in litigation beyond the expiration of the first direct-service industry contract in 1981 and the first preference utility contract in 1983.

4. The prospects of acrimony and dissension among the regional power interests are likely to increase the longer regional power supply issues remain unresolved.

5. In the meantime, an effective regional electric energy conservation program and resolution of the region's power supply problems would be impeded.

Accordingly, consensus began growing among the region's utilities, States, and political leaders regarding the need for legislative changes that would appropriately broaden BPA's role in the region while retaining a diversity in the ownership and management of the region's power system and ensure appropriate local, State, and regional controls, as well as congressional oversight. As a result of hearings in the 95th Congress, Northwest congressional leaders drafted and introduced legislation in Congress in August 1978. The proposed legislation was entitled "Pacific Northwest Electric Power Planning and Conservation Act" (S. 3418 and H.R. 13931). That legislative proposal attempted to be responsive to national energy policy, as well as to the diverse electric power and State and local governmental interests of the region. In the spring of 1979, every member of the congressional delegation from Oregon, Washington, and Idaho, except Representative James Weaver, of Oregon's Fourth Congressional District, sponsored and reintroduced this same legislation as S. 885 and H.R. 3508. This version passed the Senate on August 3, 1979. Representative Weaver introduced an alternative bill, "Northwest Renewable Resources, Conservation, and Energy Planning Act" (H.R. 4159), which also proposed mechanisms for regional power planning.

Elements of the Ranking Alternative

The ranking alternative was developed on the basis of guiding principles very similar to those set forth earlier in this overview. It is based on the legislation as originally introduced in Congress in August 1978, modified to reflect suggested amendments for improvement which repeatedly surfaced in subsequent congressional hearings held in Washington, D.C., and in the region. Among the most significant provisions of the ranking alternative are the following:

1. Power Planning. A regional power planning and conservation program would be developed and would include regional load/resource forecasts, proposed conservation programs, model wholesale and retail rate structures to encourage conservation, proposed renewable, waste heat, cogeneration, and other resource acquisitions, proposed reserves, and major transmission system additions.

2. Regional and Public Participation. A permanent Bonneville Consumers Council, to be appointed by the governors of the Northwest States, would be established. Half the members would be elected local government officials. A permanent Bonneville Utilities Council would be established, consisting of representatives elected by the region's utilities and the direct-service industrial customers. BPA would establish comprehensive public participation programs. The regional power planning and conservation program would be developed in consultation with the Northwest governors, the Consumers and Utilities Councils, BPA customers, and the general public. If there were significant disapproval, the issues would be sent to Congress for resolution. In any event, congressional approval would be required for all major resources acquisitions each of which would be included in BPA's annual budget submittal to Congress.

3. Resource Acquisition Process. All proposed major resource acquisitions would undergo review by the public at large, the Northwest governors, and the Consumers and Utilities Councils, and each would be submitted with the views of the governors and the Councils to the Congress, together with evidence of compliance with the National Environmental Policy Act of 1969.

4. Conservation. Before BPA could acquire new electric energy resources, action would have to be taken to implement all feasible, cost-effective conservation. BPA would also be obliged to encourage energy conservation among regional consumers by providing technical or financial assistance, cooperating with utilities and governmental authorities to promote voluntary conservation, and aiding State and local governments in devising conservation mechanisms.

5. Renewable Resources. If conservation savings were inadequate to meet BPA's power obligations, BPA would be authorized to obtain energy from feasible, cost-effective energy sources, owned by other entities, which relied on renewable fuels, waste heat, or cogeneration.

6. Conventional Resource Acquisitions. To the extent that conservation savings and renewable resources were determined to be insufficient to meet BPA's power obligations, BPA would be authorized to acquire the output of conventional generating facilities, with priority given to resources with high fuel efficiency. BPA would not be authorized to construct or own any generating resources except, as a last resort, small facilities to assure transmission system reliability.

7. Preference Clause. Preference and priority for public bodies and cooperatives in the sale of Federal power would be preserved intact.

8. Power Sales. BPA would meet the needs of its preference customers and, subject to availability of power and the preference clause, the requirements of investor-owned utilities, too. Preference customers and, after 5 years during which rates would be progressively decreased, the residential and small irrigation or farm loads of investor-owned utilities, would be supplied at BPA's lowest rate. Participation by utilities would be voluntary. BPA would also be able to sign long-term, power sales contracts with direct-service industrial customers, but at substantially higher rates than those customers are currently charged.

9. Rates. BPA would continue setting rates to recover all of the costs associated with acquisition, conservation, and transmission of electric power, including timely repayment of the Federal investment in the Federal Columbia River Power System, with interest. BPA rate proposals would have to be confirmed and approved by the Federal Energy Regulatory Commission.

10. Financing. The Federal Columbia River Transmission System Act would be amended to permit BPA to issue and sell bonds to the U.S. Treasury at prevailing market interest rates, not only for transmission construction, as at present, but also to help finance implementation of proposed conservation measures and research and development of unproven resources that hold promise for ultimate application within the region.

11. States' Jurisdiction. The rights of States to determine retail electric rates (except that retail rates charged residential and small irrigation customers of investor-owned utilities would have to reflect lowest rate for BPA power available to those utilities for that purpose) and the rights of States to make energy facility siting decisions would not be abridged or diminished.

The attractiveness of this particular alternative is that it would (1) meet important national energy policy goals, especially maximum use of all feasible, cost-effective conservation as a resource to reduce regional needs for additional generation, (2) assure maximum use of cost-effective and feasible renewable resources, (3) maintain the diversity of electric power ownerships in the Northwest, (4) solve regional power planning problems which have infected the region with huge uncertainties and the potential for serious power shortages, and

(5) provide State and local governments, diverse interest groups, ratepayers, and the public at large with genuine and effective opportunities to help shape the power planning program of the region.

CONCLUSION

This final environmental impact statement examines the Pacific Northwest electric energy system and BPA's role in that system. That examination includes an inspection of the activities of other enterprises in the region with respect to BPA's program and, more specifically, with respect to BPA's capabilities in power acquisition, management, transmission, and marketing of electric energy.

Over the years, BPA's relationships with other Pacific Northwest entities have been changing and evolving. It is a dynamic process which affects BPA's acquisition, marketing, and transmission capabilities and responsibilities. Among other things, these changes have reflected an evolving body of statutory authority, and the varied philosophies of the political administrations under which BPA functioned and of the eight Administrators who have been appointed to lead it from its establishment in 1937 to the present.

Whatever BPA's future role--whether as an aggressive leader or passive participant--it will result in actions and reactions of others. Perhaps the Federal District Court, in its 1977 opinion, was identifying this relationship when it directed BPA to prepare an EIS "concerning Phase 2 of the Hydro-Thermal Power Program" or any similar program entered into subsequent to Phase 1. The court's opinion characterized BPA as the "linchpin" of the Northwest's electric energy industry. Accepting that BPA's presence, by virtue of its size, makes it a prominent element in the electric energy planning process in the Pacific Northwest, and accepting further that BPA has a program which involves other energy entities in the region, its "linchpin" designation may be appropriate. BPA has written this EIS to describe the elements and assess the impacts of: (1) the regional electric energy system and what BPA does in that system, and (2) a range of BPA and regional alternatives that might begin to resolve a number of electric energy problems in the Pacific Northwest. Included in this examination are the actions and reactions of other entities within the region, and the actions and reactions of the region as a whole to BPA as the major carrier of electric energy and as the wholesale marketing agent for power produced by the FCRPS.

BPA intends, by this Final Role EIS, to have as fully explored its present program and capabilities, a range of realistic alternatives thereto, impacts, and regional actions and reactions, as is feasible and practicable at this time. Many reviewers commenting on the original Draft Role EIS complained of its complexity. Unfortunately, the relationships which are examined in this Role EIS are complex. Consequently, the EIS itself is complex. In reducing the size of this Final Role EIS, BPA has attempted to present a comprehensive but manageable analysis of its basic functions, now and as they may be in the future. This Final Role EIS also examines the environmental impacts of those functions and the environmental impacts associated with others' responses so that the readers, and, of course, decisionmakers, may understand the broad programmatic implications and consequences of decisions.

This Final Role EIS analyzes impacts of all existing facilities and those that had been scheduled for installation under Phase 2 of the Hydro-Thermal Power Program. Beyond that, it analyzes broader generic or generalized impacts which can be inferred from the five alternative packages (the BPA proposal plus four alternatives) comprising optional levels of regional cooperation and coordination. The impacts of the alternative levels of cooperation include those of potential resources which could be developed. Because the region's resource selections for the next 20 years cannot be predicted with confidence, resource impacts are addressed in the context of hypothetical "worst-case" situations with respect to adverse environmental impacts. This approach is consistent with the regulations of the Council on Environmental Quality for implementing the National Environmental Policy Act. As greater detail becomes available regarding potential resources, and as more specific proposals for power resource development are formulated, the impacts of future resources will become more precisely known, and a "worst-case" approach may be unnecessary. In summary, this EIS is a policy or program level of analysis; site specific studies for project-level proposals will provide detail to the general discussions presented in this EIS.

REPORT BY THE U.S.

General Accounting Office

Bonneville Power Administration And Rural Electrification Administration Actions And Activities Affecting Utility Participation In Washington Public Power Supply System Plants 4 And 5

Congressman George Hansen asked GAO to examine the roles of the Bonneville Power Administration and the Rural Electrification Administration in development and termination of Washington Public Power Supply System Plants 4 and 5.

GAO found:

- BPA provided electric demand forecasting help to small regional utilities, endorsed the need for additional generating units, supported utility participation in the plants, and acted to indirectly facilitate termination of the plants.
- REA directed its borrowers to pay their debts to the Washington Public Power Supply System and implied their financial standing with REA could be affected if their obligations on plants 4 and 5 are not met.

GAO/EMD-82-105
JULY 30, 1982

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

NERGY AND MINERALS
DIVISION

B-208409

The Honorable George Hansen
House of Representatives

Dear Mr. Hansen:

In your April 1 and 8, 1982, letters and in subsequent discussions with the General Accounting Office, you requested that we determine how activities of the Bonneville Power Administration (BPA) and the Rural Electrification Administration (REA) affected two incomplete nuclear powerplants (WNP-4 and 5) recently terminated by the Washington Public Power Supply System (Supply System). You expressed concern that BPA may have encouraged regional utilities to participate in these projects and that REA may be coercing rural cooperatives not to challenge the cooperatives' financial and legal responsibilities to the Supply System.

In an April 20, 1982, letter to you, we identified five concerns we would specifically examine in addressing your concerns. These areas are:

--BPA's involvement in regional demand forecasting.

--BPA's representation of the region's need for additional generating capacity to its customers during this time frame.

--BPA's involvement, if any, in its customers' decisions to participate in plants 4 and 5, and the respective levels of their participation.

--Recent BPA actions which directly or indirectly relate to termination of plants 4 and 5.

--Recent REA actions directed toward BPA customers which could affect the customers' approach to terminating plants 4 and 5.

We found that BPA

--played a role in providing electric demand forecast assistance to small customers and provided input to the region's forecast,

--endorsed the need for additional generating units to meet regional power needs by defending the validity of the regional forecast,

--supported the participation of its preference customers 1/ in plants 4 and 5, and

--took several actions indirectly facilitating attempts to mothball and then terminate plants 4 and 5.

We found that REA directed its borrowers to meet their Supply System obligations, and implied that their present and future financial standing with REA could be affected if they do not honor their obligations on plants 4 and 5.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to ascertain the facts and circumstances surrounding the five issues agreed to in our April 20, 1982, letter. To obtain information with respect to BPA's involvement in forecasting, representations on need for additional generating capacity, and involvement in customers' decisions to participate in the Supply System's nuclear plants 4 and 5, we reviewed BPA files and records pertaining to the subjects from the mid-1960s to the present. This included correspondence with various Pacific Northwest utility organizations, the Supply System, BPA studies and reports on the region's power supply and demand outlook, and regional forecasts.

To supplement this information and obtain a clear perspective of BPA's role, we identified and interviewed key BPA officials having major roles in the evolution and development of the region's power program. We specifically discussed with BPA's former Administrator, Deputy Administrator, Power Manager, and an Area Office Manager what role BPA played in forecasting the region's power needs, what pronouncements it made on the need for additional generating capacity, and whether the agency influenced its customers in deciding to participate in the construction of the Supply System plants. We also discussed the issues with present BPA officials including the Administrator and Deputy Administrator. In addition, we met and discussed these issues with representatives from the region's Public Power Council, public utility districts, municipalities, and REA cooperatives to

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1/Under statute, BPA must give preference in selling Federal power to publicly owned systems e.g., the public utilities which purchase power from BPA have traditionally been labeled BPA preference customers.

obtain their views on the events and circumstances regarding BPA's involvement and role. The utilities we met with included those you identified, others identified by another member of the Northwest congressional delegation, and others selected outside this group to provide a broader based sample.

In examining recent BPA actions related to termination of plants 4 and 5, we reviewed recent BPA files and correspondence and discussed with key BPA officials the role BPA played in the termination.

Time constraints required that we limit our review to BPA's role. Consequently, we were unable to examine the roles of other organizations in the decision to pursue and eventually terminate these plants. These include the Supply System, the Public Power Council, Pacific Northwest Utilities Conference Committee, and large industry. In evaluating BPA's activities, it is important to keep in perspective their status as one of many key organizations.

With respect to recent REA actions, we met with REA headquarters officials in Washington, D.C., and interviewed REA field representatives in the Pacific Northwest to determine their interest and role in the termination of plants 4 and 5. We also discussed REA actions with cooperatives who are participants in plants 4 and 5 as well as with representatives of the National Utilities Cooperative Financial Corporation to obtain their comments and views. In addition, we reviewed REA's files and records including field activity reports, cooperatives' financial records, participant and loan agreements, and correspondence.

We performed our review in accordance with GAO's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." Information on the five concerns and our findings follow. To understand the nature of these concerns and the history of electricity development in the Pacific Northwest, a detailed background is provided in appendix I.

BPA INVOLVEMENT IN REGIONAL DEMAND FORECASTING

Although BPA was not the primary organization for regional forecasting, it played a role in providing assistance to its small preference customers, and provided input for the region's forecasting. The official regional forecast, as recognized by the utilities, is published annually by the Pacific Northwest Utilities Conference Committee (PNUCC). This is a regional power planning organization with representation from BPA and the public and private utilities in the Pacific Northwest. The PNUCC regional forecast which is used for planning additional generation facilities is compiled from the individual utility forecasts of which BPA's input represented about 40 percent of the demand projections. During the 1970s, BPA's involvement in forecasting regional demand focused on providing technical assistance to its customers.

This assistance varied from providing minor help on technical issues in some instances to fully preparing the demand forecasts for smaller customers. BPA's forecasting assistance is provided by five economists or public utility specialists assigned to its Area and District offices who work with its customers in the preparation of their demand forecasts. The forecasts are then sent to BPA's headquarters office for review. Final approval of the forecast rests with the utility. However, BPA officials told us that many of their preference customers were small utilities with limited staffs and technical expertise in demand forecasting. Accordingly, utility officials acknowledged that they relied on BPA's expertise for assistance in such areas and accepted the forecast prepared by BPA.

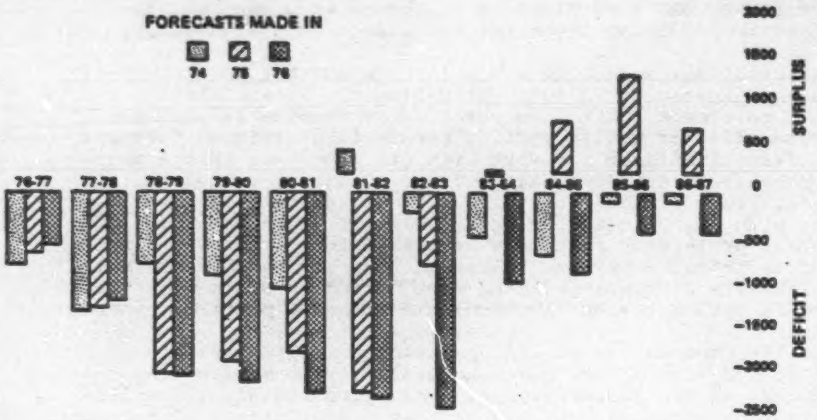
Generally, the degree of BPA involvement was inversely proportional to the size of the customer utility--the smaller the customer the greater BPA's involvement. The approximately 100 utilities receiving assistance from BPA made up approximately 20 percent of the 1974 regional demand projections. BPA also did demand estimates for the Federal agencies and industries it serves directly. For the most part, these demands were set contractually and involved little forecasting per se. The Federal agencies and industry made up an additional 20 percent of the region's 1974 demand projections. The remaining 60 percent of projected demand was from the private utilities and large public utilities which developed their forecasts independently.

BPA'S REPRESENTATION OF THE REGION'S NEED FOR ADDITIONAL GENERATING CAPACITY TO ITS CUSTOMERS

BPA and utility officials as well as documents obtained from their files agree that BPA endorsed the need for additional generating units to meet regional power needs. BPA published an annual summary of the regional forecast during the mid-1970s entitled "Power Outlook." In these documents, BPA repeatedly cited the energy deficits which were being forecast and stated that additional delays in starting construction on new thermal plants would exacerbate an already serious energy supply situation.

Additionally, in May, 2 months following publication of its 1976 "Power Outlook" BPA published a special report entitled "The Electric Energy Picture in the Pacific Northwest." This report emphasized that greater deficits were projected in the 1976 forecast than in previous years. The following chart taken from BPA's special report demonstrates the increase of projected deficits. These deficits were projected through 1987 with Supply System plant 4 anticipated to come on line in 1983 and plant 5 in 1985.

ENERGY RESOURCE FORECASTS - 1976



SOURCE: Bonneville Power Administration, "The Electric Energy Picture in the Pacific Northwest," May 1976.

BPA not only endorsed the forecast calling for additional generating units but also publicly defended the forecast against critics. In response to a critique from the Washington State Thermal Power Plant Site Evaluation Council, BPA stated that the forecast was the "best available tool for projecting the future demand for electricity in the Pacific Northwest." BPA also expressed concern that the regional forecast might, in fact, be too low.

Although BPA endorsed the regional forecast and thereby the power deficits it projected, we found no indication that BPA made an independent evaluation of the methodology or assumptions used in the total forecast. A possible reason for this was that the demand growth predicted for the Pacific Northwest of about 6 to 7 percent was similar to projections for the rest of the Nation. To meet projected demand, utilities across the country were planning to start construction on new thermal plants to avoid deficits. For example, in 1978 the Tennessee Valley Authority had 17 nuclear units under construction to meet projected demand growth. Eight of those units are currently deferred because the forecasted demand growth did not materialize and TVA is now considering whether to cancel four units.

BPA'S INVOLVEMENT IN CUSTOMERS' DECISIONS TO PARTICIPATE IN PLANTS 4 AND 5

According to BPA's Administrator during the mid-1970s, BPA "actively supported" the participation of its preference customers in plants 4 and 5. This is further supported by BPA correspondence from the time period and by statements made by public utility officials we interviewed. A November 8, 1974, letter from the BPA Administrator to BPA's preference customers discussed the need for plants 4 and 5 and another nuclear plant. That letter stated in part:

> "These projects are scheduled * * * to meet Northwest utilities' load growth during the mid-1980s. Major financing will be needed in 1975 to maintain the construction schedules for these essential projects * * *.
>
> "Any utility which needs additional power resources in the mid-1980s will need to enter the Participant's Agreements with WPPSS at this time. Only by utilities signing these agreements can these generating projects be constructed on the schedule required to meet loads of Northwest utilities after July 1, 1983."

Another letter on June 11, 1975, from the BPA Power Manager to REA who was reviewing the option agreements for plants 4 and 5 on behalf of REA cooperatives stated:

> "Resources available to meet the estimated loads of BPA's preference customers, including REA borrowers, after July 1, 1983, would be inadequate without the capability of the projects. We know of no other projects, under construction or planned, available to the customers which would fulfill the need in the time frame that the projected need exists. While we cannot verify each utility's load estimate, our participation in load estimating procedures of the REA borrowers indicates that the estimates generally conform with current BPA load estimating standards. * * * Finally, a major strength of the proposed projects is that they have been planned to meet the region's preference agencies' load growth as a whole. These agencies through their participation in the Public Power Council have acted together to plan for their future power supply. By participating in the projects, the cooperatives have been given the opportunity to buy capability from the project at cost."

Later, at a March 17, 1976, BPA Regional Advisory Council meeting, the BPA Administrator made the following comments:

> "The first one that came to mind * * * was that we wanted to provide some certainty in the planning process for those who have a responsibility to their own local customers. The second objective we listed was that we wanted to meet the regional power requirements. In that regard we thought it was important, if possible, to find a way to keep the WPPSS plants 4 and 5 on schedule.
>
> * * * * *
>
> "All of this boils down to the fact, * * * it would be desirable for public power to continue to try to keep plants 4 and 5 on schedule."

BPA continued to support its customers participation in plants 4 and 5. In April 1976, BPA met with its preference customers to inform them that BPA would not be able to meet all their future power requirements, and that they would soon be receiving the "notice of insufficiency." As a result of uncertainty created by the lack of a BPA power allocation policy, the preference customers were reluctant to sign up for plants 4 and 5, fearing that if they did so they would be later penalized by BPA in the allocation process. The Administrator told them he would be sending them a letter, which he later did, assuring them that they would not be penalized in any future BPA policy on power allocation for participating in the plants.

Information distributed at the BPA April 1976 Preference Customer Meeting showed that the estimated cost of Supply System plants 4 and 5 was about $2.4 billion. During the afternoon session of this meeting, representatives from the Supply System discussed the participants and ownership agreements for the two nuclear plants. A week after this meeting, the Supply System mailed participants agreements and related documents to prospective participants giving them 90 days to execute the agreements.

Further actions by BPA include meeting with preference customers in late May 1976 to discuss the deteriorating power supply picture and the importance of the region having adequate resources to meet projected demand requirements and participating in plants 4 and 5. Supply System representatives also attended the meeting to discuss the plants and answer questions of prospective participants. Also, BPA told its preference customers in the June 1976 notice of insufficiency that it would be unable to meet their future power requirements. Subsequently, in July 1976, 88 public utilities and 1 investor-owned utility signed agreements for plants 4 and 5.

Although it is not possible to quantify the impact BPA's statement had on the utilities' decision to participate, the notice of insufficiency, according to a number of participants, was a strong factor in their decision to participate in plants 4 and 5.

In addition to encouraging customer participation in the plants, BPA helped its customers determine their respective level of participation. According to a BPA official, a utility's percentage of participation in plants 4 and 5 was determined by using a formula developed by the Supply System. Each participant's share was aimed at 80 to 90 percent of their demand growth between 1983 and the late 1980s. In November 1974, BPA scheduled customers' meetings in each of its five service areas to explain the need for, and purpose of the proposed participant agreements. The BPA letter scheduling the meeting stated that its area power managers were to work with each utility to help determine the need for and amount of participation by each utility in projects 4 and 5.

BPA ACTIONS RELATED TO TERMINATION OF PLANTS 4 AND 5

Although it had no direct financial interest in plants 4 and 5, BPA management was concerned that an uncontrolled termination of the plants could impact on the three net billed plants. BPA, therefore, took several actions indirectly affecting attempts to mothball and terminate plants 4 and 5. In July 1981, as cash for the plants was running out, BPA reached an agreement with the Supply System to sell $100 million of nuclear fuel contracts and spare parts from plants 4 and 5 to one of BPA's net billed plants. The $100 million transferred to plants 4 and 5 allowed the Supply System to keep these plants financially alive until October 1981, an extension of 2 months, and provided additional time to find future funds for the plants. Between October 1981 and January 1982, BPA also assisted in attempts to develop a mothballing plan. At this time BPA was working with the Supply System and other regional power entities on alternatives to termination and encouraged the participation of various groups in the mothballing proposals including private utilities and large industry. For example, BPA agreed to act as an escrow agent for the participants during this period to collect the loan funds.

In October 1981, regional utilities and large industry agreed to loan the Supply System $60 million to fund plants 4 and 5 while attempts were being made to develop a mothballing plan. 1/ Between

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1/The loans to the Supply System by 66 participants, 3 investor-owned utilities, and 12 direct service industry customers were made in equal amounts in Nov. and Dec. of 1981. The effective rate of interest on these loans is 15 percent, and the loans are due on July 1, 1984.

October 1981 and January 1982, the Supply System worked to obtain short-term loans from the 88 project participants. However, sufficient funds were not obtained, and the Supply System adopted a resolution terminating plants 4 and 5 on January 22, 1982.

REA ACTIONS DIRECTED TOWARDS BPA CUSTOMERS

Subsequent to the Supply System's decision to terminate plants 4 and 5, REA has directed its borrowers (that are both customers of BPA and participants in the plants) to meet their Supply System obligations, and implied that their present and future financial standing with REA could be affected if they do not honor their obligations on plants 4 and 5. For example, after the Supply System's decision to cancel the plants, REA in a January 29, 1982, letter to its borrowers endorsing an orderly termination of the project stated

--each system is expected to honor Supply System obligations,

--steps should be taken to implement rate increases to meet Supply System obligations, and

--defaults by the Supply System could trigger actions and litigations accelerating the financial obligations of the participants.

REA also asked its borrowers to establish and submit plans for meeting Supply System obligations and requested that their boards pass a resolution agreeing to advance money for the termination costs of the plants.

On February 10 and March 22 and 23, 1982, REA and the National Rural Utilities Cooperative Financing Corporation 1/ held joint meetings with the participants to discuss their obligations and formulate a unified approach in addressing some issues raised about termination. Several REA borrowers who attended the meetings alleged that although REA did not prohibit borrowers from legally challenging their obligations to the Supply System, REA implied they would have difficulty obtaining REA financing if they did. REA officials, however, said they told the participants they appreciated their problems but still expected them to honor their commitments whether or not they were involved in lawsuits challenging the payments. Further, REA officials maintain that at the March meetings they assured

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1/The National Rural Utilities Cooperative Finance Corporation is a private lending organization which provides financing to rural electric utilities and has made loans to 34 of the participants.

borrowers they would "work with those" that were unable to meet their Supply System debts. REA, however, kept no minutes of the meetings or elaborated on how it would work with its borrowers.

According to REA's files, their field staff warned several borrowers to honor their Supply System debts. For example, in a March 25, 1982, field report, an REA representative wrote in reference to one borrower and its questions on paying its Supply System obligation: "As the system is way past due to come in for a new loan application I felt it was only right to notify their manager as to the obligations of the system well before this goes any further." Another document in REA's files indicated that some borrowers may have been led to believe that the agency would not process future loan applications unless they agreed to pay the obligations. Further, the manager of one cooperative told us that an REA field representative had warned him that REA would replace him and the board if the cooperative challenged its Supply System commitments. The REA representative maintained that he did not make such a warning but only pointed out that REA has the authority to appoint a supervisor to conduct the cooperative's affairs if the borrower has difficulty meeting its obligations.

In an April 21, 1982, letter, REA also requested each borrower to develop and submit a financial forecast by June 30, 1982, indicating how it planned to meet its Supply System obligations, and stated that new loans and advances on previously approved loans would be withheld pending the receipt and review of the forecasts. REA stated that it could not continue approving loans or loan advances until it was assured that satisfactory plans to cover Supply System debts were developed. REA, however, did not specify what constitutes an acceptable financial forecast and advised us that they have no set criteria for reviewing the forecasts or determining whether they are satisfactory. With respect to advances on approved loans, REA advised us that they would continue to make advances if so required despite the letter.

In a May 1982 letter responding to an inquiry from one cooperative regarding the Supply System obligations, REA ignored the borrower's basic question. The cooperative wanted to determine if REA borrowers involved in legal action could withhold payment to the Supply System without objection or penalty from REA, provided that the utility had generated sufficient income to pay the obligation should the legal challenge be unsuccessful. REA's response did not directly answer the question, but stated only that the borrowers were expected to honor their obligations to the Supply System under the 1976 agreement. REA did not advise the cooperative whether or not it would be penalized if it chose to enter a lawsuit. An REA official in a May 1982 congressional hearing did, however, testify to the effect that REA would not penalize borrowers if they participated in lawsuits challenging the obligations.

In discussing the rationale for their recent actions, REA officials told us that they expect the borrowers to begin making their debt service payment to the Supply System beginning in January 1983 as required by contract. We were told that in REA's view, the cooperatives entered an agreement with the Supply System and have an obligation to honor this agreement although many of the borrowers may be faced with serious financial problems in meeting these payments. REA officials acknowledged that default on some of its direct loans to borrowers could increase if these borrowers are required to meet their Supply System obligations. 1/ REA, however, has not reached any conclusions on possible defaults because it has not completed its review of borrower financial plans.

Further, these officials maintained that nonpayment of the Supply System debts could have even more serious consequences for REA. REA has taken this position because it is concerned that failure of its borrowers to pay their Supply System obligations could adversely affect REA's $26 billion loan guarantee program and the ability of its rural electric cooperatives to obtain funds in the private capital markets. REA maintains that its loan guarantee program would be adversely impacted if the "take or pay" provision of the Supply System agreement (see appendix I) is not upheld by the courts in the pending lawsuit and the borrowers are not required to pay the debt. Currently, REA guarantees loans to finance construction of power plants from the Federal Financing Bank to generating and transmission cooperatives all over the Nation. To protect REA's interest, generating and transmission cooperatives are required to have similar "take or pay" contract provisions with their distribution cooperatives for selling the power. This assures that the generating and transmission cooperatives will be paid even if power is never delivered, thus assuring that they would have funds to repay the loans.

REA is also concerned that the situation could make it difficult for its rural electric cooperatives to obtain funds from private markets. REA officials expressed concern that failure of its borrowers to honor the Supply System obligations would be viewed negatively by the entire financial community. Such a development, REA officials contend, would affect the credibility of the entire rural electric cooperative sector because the financial markets would perceive more risks in funding cooperative activities.

The National Utilities Cooperative Finance Corporation is a case in point. It borrows money from private capital markets for relending to rural electric cooperatives. Because of the Corporation's financial structure, its credit worthiness is directly tied

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1/These loans amount to about $319 million.

to that of its member cooperatives. An adverse development with respect to the Supply System could make borrowing more difficult or costly for the National Utilities Cooperative Finance Corporation. Consequently, this could result in less private financing and lead to the necessity for more REA assistance.

AGENCY COMMENTS

A draft copy of this report was provided to BPA and REA for comment. Their detailed comments are included in appendixes II and III. BPA said the information regarding its activities was accurately stated. REA did not have any major objections to the report but did offer a number of specific comments expanding on REA's activities. We have evaluated REA's comments and incorporated them into the report where appropriate except for the following comment.

REA stated it has criteria for determining an acceptable financial forecast in REA Bulletin 105-5. We do not agree. The bulletin states that its purpose is "to provide electric distribution borrowers with suggested forms and techniques for preparing a financial forecast." It does not state what REA's policy is or what criteria must be met to qualify for a loan. In contrast to REA, the National Rural Utilities Cooperative Finance Corporation has an official statement "Policy and Procedures Memorandum-Loans-1" setting forth its specific loan policy and has a supplemental memorandum establishing additional loan conditions for Supply System participants.

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We trust this material answers your questions. As arranged with your office, we will not release this report to other interested parties for 7 days unless you publicly announce its contents earlier. At that time, copies will be sent to interested parties and will be made available to others on request. If we can be of any further assistance, please let us know.

Sincerely yours,

J. Dexter Peach

J. Dexter Peach
Director

BACKGROUND ON ELECTRIC POWER IN THE PACIFIC NORTHWEST

The diverse nature of regional power development in the Pacific Northwest [1] has given rise to a myriad of regional power supply and power planning institutions consisting of a public, private, and Federal mix. BPA, the major power supplier in the Northwest, currently wholesales approximately 50 percent of the region's power. The remaining 50 percent is generated by a number of private and public utilities and publicly owned utility groups. About 100 public utilities are distributors only, buying their power requirements from BPA.

The Supply System and the Pacific Northwest Generating Company (PNGC) are two utility groups involved with generating power for the regional system. Formed in 1957 under the laws of the State of Washington, the Supply System (made up of 23 utility members) has the authority to acquire, construct, and operate generating plants and other related facilities. The Supply System was formed by the public utilities to enhance their ability to successfully undertake these activities. Formed in 1975, PNGC is currently a consortium of 20 rural electric cooperatives. PNGC activities to date have been primarily limited to purchase of shares in generating facilities owned and constructed by other utilities.

Until the 1960s, nearly all the region's electric energy needs were met by hydroelectric projects built on the Columbia River system. In the mid-1960s, projected future demand exceeded the projected baseload capability of the region's hydropower system. In response, in October 1966, BPA and the region's public and private utilities formed the Joint Power Planning Council, with the BPA Administrator as chairman, to study the region's future need for electric power and to develop a plan to meet that need.

As a result of this effort, the Hydro Thermal Power Program was developed in 1969 to meet forecasted electrical demand by incorporating new coal-fired and nuclear generating plants into the existing hydroelectric system. The initial activities of the program involved constructing seven large thermal plants, expansion of the generating capacity at hydroelectric projects, and further development of the Federal transmission system. The seven generating plants included the Supply System's nuclear units 1, 2, and 3; Portland General Electric's Trojan Nuclear Plant, and Boardman Coal Plant; and Pacific Power and Light's Centralia and Jim Bridger Coal Plants.

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[1] The term Pacific Northwest as used here means the States of Washington, Oregon, Idaho, and Montana west of the Continental Divide.

BPA agreed to participate in financing the Supply System's units 1, 2, and 3 construction through an arrangement with its preference customers called net billing. Under net-billing, BPA acquires its preference customers' share of the electric power generated by the new non-federally financed thermal plants. This thermal power is integrated into BPA's hydroelectric system and sold to BPA's customers at BPA's rates. In return for the power acquired, BPA assumes the preference customers' share of the construction, operation, and maintenance costs of these plants. BPA pays for these costs by offsetting them against the amounts due BPA for the sale and/or transmission of power or sale of services to the preference customers.

In 1972, BPA's ability to assist in the net-billing financing of additional generating units was halted by two developments. First, due to increases in the projected costs associated with the net-billed plants, the annual cost to BPA was projected to exceed the revenues received from power sales and other services to preference customers. Second, the Internal Revenue Service issued a tax ruling revoking the tax exempt status of municipal bonds sold to finance powerplants if more than 25 percent of the capability is assigned to a Federal agency. These events, coupled with delays in the construction of the net-billed plants, led Northwest power planners to believe they would not have adequate resources to meet projected regional demand growth beyond the early 1980s.

Under these circumstances, the Secretary of the Interior instructed BPA in March 1973 to informally notify its customers that it would be unable to meet their full power requirements beginning in 1982 unless the utilities and BPA could develop another plan. These "notices of insufficiency" were intended to allow time for the utilities to obtain additional resources outside of the Federal system and for BPA to develop a policy for allocating the Federal power available. In December 1973, BPA and regional utilities agreed to a "phase II" of the Hydro Thermal Power Program.

Under phase II, the utilities would continue to construct thermal generating units but without BPA participation in financing of the plants. Additional generation took on a new importance to the region after 1973 when energy shortages caused by low water in the region's reservoirs prompted pleas from utilities that their customers conserve energy. Large industry loads were interrupted and at least one State adopted an emergency power curtailment plan. Due to the oil embargo, the Nation's energy policies were also focused on alleviating energy shortages.

By 1974, the Supply System, with support of the Public Power Council, was pursuing the development of plants 4 and 5 as part of phase II. The Supply System financed the initial development of the two plants with a $17.5-million note issue. These funds began to run out in 1975, and 93 regional utilities interested in purchasing shares of the plants' capability signed option agreements. The option agreements were then used to back the issuance of additional debt. Under the option agreements, utilities gained the right to execute a future agreement to purchase a share of the project capability.

Problems developed, however, with finalizing the formal participants agreements. Utilities were hesitant to sign the agreements unless BPA agreed their participation in plants 4 and 5 would not cause them to lose access to or be penalized in Federal power allocations. In early 1976, BPA alleviated this concern by assuring their preference customers that their participation in the plants would not place them "in a less favorable position than non-participating customers with respect to future allocations of BPA power." Also in June 1976, BPA formally notified their preference customers it would be unable to meet their full requirements after 1983.

Subsequently, 88 preference customers and 1 investor-owned utility agreed to participate in plants 4 and 5. REA also became indirectly involved in the construction of plants 4 and 5 even though no Federal funding was involved because 41 of the participants were REA borrowers and could not participate in the projects without REA approval. 1/ In September 1976, REA authorized its borrowers to participate in the construction financing of the two plants.

Between 1976 and 1981, the Supply System continued the construction of plants 4 and 5. However, construction delays and dramatically increased projected costs ($2.4 to $7.8 billion) began to cause regional concern over the two units. A January 1981 report by the Energy and Utilities Committee of the Washington State Senate raised "serious questions" about whether the plants would be completed. The report questioned whether the Supply System could continue to find buyers for bonds to finance the plants. In March the committee recommended the Supply System consider a "temporary pause" in construction.

In June 1981, the Supply System board, on the recommendation of its managing director, voted to slow down construction of the plants. As the year progressed, financing for the plants appeared in jeopardy, and the Supply System worked on plans to "mothball" the units to avoid terminating them. However, the participants were unable to come to an agreement on mothballing, and on January 22, 1982, the Supply System decided to terminate the two plants.

1/The Rural Electrification Act as amended (7 U.S.C. 902) authorizes REA to make and guarantee loans to rural electric cooperatives for financing the construction of electric generating, transmission, and distribution facilities. Under REA loan agreements, borrowers may not undertake any new financial obligations unless they are approved by the REA.

The amount borrowed for these two plants was $2.25 billion and by the time this debt is retired, the principal and interest will amount to about $7.2 billion.

Because of the large financial costs to the participants and the fact that they will never receive power, several REA cooperatives have brought suit. 1/ They are arguing that the "take or pay" provision of their contract is invalid, and that they do not have to honor their obligation to the Supply System. The Supply System contends that under the "take or pay" provision of the agreement, the participants are required to make payments whether or not the plants are completed or operable.

1/Twelve REA borrowers filed a lawsuit on April 23, 1982, challenging the Supply System take or pay contracts.

Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

OFFICE OF THE ADMINISTRATOR

In reply refer to: CE/BPA-A

JUL 22 1982

Mr. J. Dexter Peach
Director, Energy and Mineral Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

We appreciate the opportunity afforded us by the General Accounting Office to comment on your draft report regarding the roles of the Bonneville Power Administration (BPA) and the Rural Electrification Administration (REA) in the construction of Washington Public Power Supply System projects WNP-4 and WNP-5. We have reviewed the draft report and find the facts reported regarding BPA activities are accurately stated.

We do not feel competent to comment on those matters relating to REA activities.

I believe you and your staff are to be commended on the objectivity and evenhanded manner in which you approached this complex assignment.

Sincerely,

Peter T. Johnson
Administrator

United States
Department
of Agriculture

Rural
Electrification
Administration

Washington
D.C.
20250

JUL 22 1982

Mr. Henry Eschwege
Director, Community and Economic
Development Division
U. S. General Accounting Office
Washington, D.C. 20508

Dear Mr. Eschwege:

This is in reply to your letter of July 13, 1982, to Mr. Harold V. Hunter, Administrator, Rural Electrification Administratin (REA) for comments on the draft of the proposed report to Congressman George Hansen, entitled "Bonneville Power Administration and the Rural Electrification Administration Actions and Activities Affecting Utility Participation in Washington Public Power Supply System Plants 4 and 5 (GAO/EMD - 82-105)." We appreciate the opportunity tc review the draft and offer the following comments:

Page 9, first paragraph:

The letter written to all REA borrower/participants on January 29, 1982, was after the Washington Public Power Supply System (Supply System) had adopted a resolution to terminate Plants 4 and 5. Once the decision had been made by the Supply System to terminate, the participants' options were a "controlled" or "uncontrolled" termination of these plants. The earlier efforts to mothball the plants, which REA supported, had failed. It was REA's concern that possible actions arising from uncontrolled termination, including the possible acceleration of the debt on the outstanding bonds, would have an adverse effect on all participants. The acceleration of debt would seriously jeopardize the REA borrower/participants' ability to meet their obligations, including those to REA. Controlled termination, on the other hand, under which the participants were requested to advance funds to the Supply System as needed to provide the resources for an orderly termination of the plants, would forestall such acceleration and provide for repayment of outstanding debt over a much longer period of time. For this reason REA was of the opinion that support of the controlled termination program was the only viable alternative available to its borrowers.

See GAO note on page 8 of appendix III.

Page 8, second paragraph:

The meetings on February 10 and March 22-23 were not only to discuss REA's position regarding controlled termination but were also an effort to improve communications and formulate a unified approach in addressing some of the issues raised about the controlled termination plan. Basic to both of these meetings were REA concerns over its own security interests in the borrower/participants and that refusal to honor contractual obligations under the 1976 agreement could have an adverse impact on the rural electrification program.

Page 9, bottom of page
Page 10, top of page:

REA's position is that our borrower/participants should honor all commitments made under the 1976 agreement unless otherwise determined by a court of law. REA's concern is that the actions of the borrower/participants who have undertaken legal efforts to resolve any areas of ambiguity which they feel might exist in the 1976 agreement not place in jeopardy REA's first mortgage lien upon the assets of the borrowers. Any claim on the borrowers' assets which could result from these legal efforts would create problems in continuing to advance existing loan funds and in obtaining additional loans from REA by imposing a threat to REA's existing security interests.

At the March 22-23 meeting, REA requested that each borrower/participant prepare a financial forecast on how they would meet their obligations. REA indicated to the group that it shares the borrowers' concern over the impact on rates and would work with the borrowers in developing their financial plans.

Page 10, first paragraph:

REA has certain rights reserved to it under the loan and mortgage documents executed by its borrowers which provide, among other things, that REA may take possession of and manage, control and operate a borrower's system under certain specified conditions of default. A borrower's financial difficulties in itself is not an event of default.

Page 10, second paragraph:

REA does have established criteria for determining an acceptable financial forecast. The criteria is outlined in REA Bulletin 105-5, and is basically the same as that used in connection with preparation and review of forecasts prepared by all of its borrowers on a regular basis. REA field personnel have conducted workshops and worked individually with borrower/participants to develop the financial plans requested by REA. An interpretation of the proper accounting for the Supply System costs and obligations has also been sent to each borrower/participant. REA has agreed to extend the deadline for submission of the financial forecasts as may be needed and to date has received 19 of the expected 41 forecasts.

Page 10, third paragraph:

REA's May 17, 1982, response to an inquiry from Orcas Power & Light Co. states that the "board of Orcas is certainly free to follow the advice of its legal counsel in an effort to resolve those areas of ambiguity which counsel and the board might find to exist in the WPPSS 4 and 5 agreements, providing that in doing so the first security interest in the assets of Orcas held by REA will not be placed in jeopardy." Whether any legal action undertaken by Orcas will be a threat to REA's security interest or not, cannot be judged at this time.

Page 11, first paragraph:

Although some borrower/participants have stated that rate increases sufficient to meet the Supply System obligations, in addition to their other operating costs, would be impossible to implement. REA has not yet completed its review of the financial plans to reach any such conclusion. Depending upon the economic conditions of the borrower's area and the rate increases necessary for the borrower to meet its obligations, the possibility of future defaults will be considered in REA's evaluation of the borrowers' financial plans.

Page 11, second paragraph:

Although it could have an adverse effect on REA's guaranteed loan program, if the "take or pay" provisions of the Supply System agreement are not upheld, REA is not of the opinion that the program would be "destroyed".

REA would be happy to discuss any of the above comments with you or your staff.

Sincerely,

JOE S. ZOLLER
Acting Administrator

GAO note: Page numbers of the draft report were changed to correspond with those in this final report.

(005278)

Department of Energy
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

OFFICE OF THE ADMINISTRATOR

SEP 8 1982

RECEIVED
SEP - 9 1982
BPA
AC

In reply refer to: CE/BPA-AE

Honorable George Hansen
House of Representatives
Washington, D.C. 20515

Dear Mr. Hansen:

This is to respond to your letter of August 2, 1982, to which we furnished an interim reply dated August 12, 1982.

As requested in your letter, Bonneville Power Administration (BPA) has prepared a chronology of the events and forces which led to the decisions to build and subsequently to delay or terminate some of the Washington Public Power Supply System (WPPSS) nuclear projects. This chronology of events has been assembled from a variety of source materials which are believed to be reliable--particularly the WPPSS official bond sale statements--and includes references to load forecasts and other regional studies and events in an attempt to lend context to the WPPSS nuclear construction program.

Also enclosed is a chronology of the financing of these nuclear units. This chronology of financing includes the date on which each series of security was sold, which date is also the date on which the WPPSS board of directors (and BPA in the case of bonds for WPPSS Nuclear Projects (WNP) 1, 2, and 3) authorized bonds to be issued. Preparation for a bond sale may begin months in advance of the sale date but no sale is certain until the WPPSS board accepts the structure and price of the bond issue. Therefore, the date of sale designates the final decision to sell bonds.

We trust that the enclosed material is fully responsive to your request. Should you desire additional information, please let us know.

Sincerely,

(SGD) PETER T. JOHNSON
Administrator

Enclosures

Chronology of Events Regarding the Supply System Nuclear Projects[1]

August 20 1937	The Bonneville Project Act is signed into law creating a "provisional" agency to market power from the Bonneville Project. Later BPA is authorized to market power from all Pacific Northwest, Federal hydroelectric projects but one. Public bodies and cooperatives are granted preferential access to Federal power. BPA has no authority to own or construct power resources.
1942	Hearings held on Columbia Power Administration bill; no action taken.
1951	Hearings on HR 4963 to authorize BPA to build and operate thermal plants; no action taken.
1957	Washington Public Power Supply System (The Supply System) formed by 16 public utility districts to construct and operate generating resources.
1958	New Production Reactor on Hanford Reservation authorized with conversion feature to allow use of waste heat to generate electricity.
1960	Supply System begins construction of Packwood Lake Hydro Project.
1962	Packwood Lake begins commercial operation.
1963	Congress authorizes the Supply System to buy waste steam from New Production Reactor ("NPR").
1965	BPA raises its rates for the first time since 1939 by 3 percent.
November 29 1966	NPR reactor steam plant begins commercial operation, under budget and ahead of schedule. Joint Power Planning Council (JPPC), composed of 108 public and private utilities and BPA is formed to develop a program to meet the estimated Pacific Northwest need for 32 million kilowatts of hydro and thermal electric generation over the next 20 years.

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[1] This chronology reflects the synopsis of events described in numerous sources believed to be reliable which were available to Bonneville staff and does not purport to be complete or definitive. Certain events, particularly those surrounding decisions regarding Projects Nos. 4 and 5, are best known to participants in these projects and their representatives, and Bonneville makes no claim to possessing direct documentation of such events or decisions.

October 1968	The JPPC announces the Hydro-Thermal Power Program-Phase I (HTPP-I) covering generation to be constructed in the region over the next ten years. The plan calls for the Federal government to continue to construct additional hydro-electric capacity; the public and private utilities to build and operate thermal plants; and BPA to acquire or exchange power from the thermal plants to meet the requirements of its preference and direct-service industrial customers and to carry reserves to meet unforeseen regional load growth. HTPP-I included Supply System Nuclear Project (WNP) Nos. 1, 2, and 3 and the Trojan Nuclear Project.
1969	Public Works Appropriation Act for fiscal year 1970 approves BPA's proposed net-billing procedure for implementing the HTPP-I with respect to the Trojan Nuclear project.
October 7 1970	Public Works Appropriations Act for 1971 approves additional net-billing by BPA for WNP Nos. 1, 2, and 3.
June 23 1970	PNUCC forecasts 5.1% annual compounded rate of energy load growth in 1971-1981 period.
January 4 1971	Contracts for WNP No. 2 signed by BPA, 94 preference customers and the Supply System.
March 24 1972	PNUCC forecasts 4.78% compounded annual average energy load growth in 1973-1983 period.
1972	U.S. Treasury issues regulations implementing the Revenue and Expenditure Control Act of 1968 reducing BPA's ability to acquire a major interest in additional electric generating plants financed through issuance of Federally tax-exempt bonds for which commitments had not previously been made.
1973	Investor-owned utility (IOU) firm power contracts with BPA expire. Because of lack of adequate additional Federal power available to meet IOU projected loads, these contracts are not renewed.
January 1 1973	WNP No. 2 preliminary estimated total project cost $465,900,000.
February 6 1973	WNP No. 1 Contracts signed; subsequently amended, May 1974.

March 12 1973	Secretary of Interior instructs BPA to begin planning Phase II of HTPP. This includes notifying all BPA customers of power insufficiency unless plan is developed to assure region of future power supply and minimize financial demands on Federal Treasury.
April 9 1973	PNUCC forecasts 4.7% compounded annual average energy load growth for the period 1974 to 1984.
May 19 1973	Construction begins on WNP No. 2.
June 1973	First WNP No. 2 budget as published in bond statement estimates cost to complete of $504,000,000.
June 26 1973	Resolution 640 adopted by Supply System to authorize sale of bonds for WNP No. 2.
September 25 1973	WNP No. 3 agreements signed.
December 14 1973	Pacific Northwest utilities and BPA announce HTPP-II for the development of generation through 1986. Thermal plants are to be constructed by public and investor-owned utilities to meet their own load growth; BPA will construct transmission; and BPA direct-service industries are to purchase up to 1,000 MW of new thermal capacity to provide regional reserves and improve the availability of their interruptible power.
December 1973	Public Power Council requests the Supply System to investigate an additional 1,200,000 kW nuclear plant. (WNP No. 4).
January 1 1974	WNP No. 1 preliminary estimated total project cost $627,000,000.
April 5 1974	PNUCC forecasts 4.7% compounded annual average energy load growth in the period 1975 to 1985.
May 10 1974	Supply System Board directs that engineering design and procurement begin for twin units to WNP Nos. 1 and 3 (to become WNP Nos. 4 and 5).
July 1974	BPA raises rates to produce a 27 percent increase in revenues.

July 1974	Supply System announces that commercial operation of WNP No. 2 by 12/1/77 has only a 16% probability but that commercial operation by 6/1/78 has a 50% probability.
October 18 1974	President signs into law Federal Columbia River Transmission Act, authorizing BPA to pay operating and maintenance costs from revenues and pay costs of transmission construction from revenue and revenue bond proceeds. It also authorizes BPA to borrow up to 1.25 billion through the sale of revenue bonds to the U.S. Treasury.
October 25 1974	Supply System announces a $2.1 billion financing program for WNP Nos. 4 and 5.
December 1 1974	WNP No. 2 completion date extended to 6/1/78 and cost at completion estimated to be $646,803,000.
January 1 1975	WNP No. 3 preliminary estimated total project cost $801,000,000.
February 1 1975	PNUCC forecasts 4.9% compounded annual average energy load growth for the period 1976 to 1986.
September 18 1975	Resolution 769 adopted by Supply System to authorize sale of bonds for WNP No. 1.
December 3 1975	Resolution 775 adopted by Supply System to authorize sale of bonds for WNP No. 3.
January 1 1976	WNP Nos. 4 and 5 preliminary estimated total project cost $2,361,052,000.
April 15 1976	Participants are sent contracts for WNP Nos. 4 and 5.
April 16 1976	Ownership agreement for WNP No. 5 between the Supply System and PP&L is sent to PP&L.
April 17 1975	NRDC files suit in Federal court seeking to enjoin BPA's participation in HTPP-II until it files an adequate EIS.
June 1976	WNP No. 2 scheduled operation date slipped to December 1979 and cost to complete at $827,300,000.

June 2 1976	Plumbers and steam-fitters strike at WNP Nos 1 and 2 sites; dispute settled November 15, 1976.
June 24 1976	BPA formally gives customers "notice of insufficiency" which, under then existing power sales contracts, relieved BPA of its obligation to meet the load growth requirements of publicly-owned utilities after July 1, 1983.
July 14 1976	Participants sign contracts for WNP Nos. 4 and 5 and PP&L signs WNP No. 5 ownership agreement.
July 23 1976	Supply System announces that initial commitments for 133 percent of WNP Nos. 4 and 5 are received.
September 1 1976	WNP No. 1 schedule slipped to September 1981 and cost to complete estimated at $1,000,000,000. WNP No. 3 slipped to October 1982 and cost to complete the Supply System's 70 percent ownership share estimated at $1,060,000,000. WNP Nos. 4 and 5 commercial operation at March 1983 and November 1984 respectively and project costs estimated to total $3,110,000,000. Total Supply System 5 plant financing estimated at $6,395,000,000.
February 15 1977	PNUCC forecasts 4.85 percent annual average compound energy load growth for the period 1978 to 1988.
February 23 1977	Resolution 890 adopted by Supply System to authorize sale of bonds for WNP Nos. 4 and 5.
March 1 1977	WNP No. 4 and 5 commercial operation slipped to January 1985, raising total Supply System project costs to $3,377,000,000 and raising total five plant financing program to $6,518,000,000.
April 8 1977	WNP Nos. 3 and 5 receive limited work authorizations from NRC.
May 2 1977	PPC sends draft regional power legislation to Congress.
June 1977	As a result of strike and other construction delays the Supply System estimates total 5 project financing requirement to be $6,575,000,000.

July 1977	WNP No. 3 commercial operation slipped from September 1980 to September 1983.
1976-1977	Drought results in lowest stream flows ever recorded in Columbia Basin.
July 28 1977	Oregon State Legislature authorizes a "Domestic and Rural Power Authority" ("DRPA") claimed by leaders to qualify all Oregon residential electricity consumers for preference to BPA's Federal power.
September 1977	Commercial operation dates for WNP Nos. 1, 2, 4, and 5 slipped to December 1982, September 1980, June 1984, and March 1985, respectively, resulting in increased construction costs and a total financing program of $6,982,000,000.
September 9 1977	PNUCC regional power legislation is introduced in the House (H.R. 9020) and Senate (S. 2080).
November 14 1977	City of Portland sues BPA asking, in part, that net-billing contracts be declared null and void.
January 1978	"DRPA" legislation is introduced in Idaho Legislature.
January 1978	Supply System 1978 construction budgets show a slip in commercial operation for WNP Nos. 3 and 5 to January 1984 and July 1985 respectively. Total 5 plant financing program estimated at $7,233,000,000.
January 3 1978	BPA begins development of a formula and policy to allocate the limited Federal power resources among preference customers.
March 1978	Idaho "DRPA" legislation tabled in committee.
March 15 1978	PNUCC forecasts 3.9 percent compound annual average energy load growth for the period 1979 to 1989.
April 11 1978	NRC issues construction permits for WNP Nos. 3 and 5.
June 2 1978	BPA discussion paper on the allocation of power resources is sent to preference customers.

August 10
1978

GAO study, "Region at the Crossroads," recommends that BPA be declared a national resource to be shared by all 50 states, among other things.

September 1
1978

WNP No. 2 commercial operation slipped to December 1980; additional probable cost increases estimate for all 5 projects bringing total financing program to $7,459,000,000.

January
1979

A report commissioned by BPA and prepared by Theodore Barry and Associates recommends improvements in Supply System operations which are estimated to save 3 to 4 percent of remaining project construction costs.

February 1
1979

The Supply System estimates new commercial operation dates and financing requirements for all projects:

Project	Financing	Commercial Operation
WNP No. 1	$1,561,000,000	December 1983
2	$1,340,000,000	September 1981
3	$1,117,000,000	December 1984
4/5	$4,505,000,000	July 1985/June 1986
TOTAL	$8,523,000,000	

March 5
1979

Ninth Circuit Court of Appeals affirms Alumax decision restraining BPA Phase II activities until an EIS is published.

March 28
1979

Accident occurs at Unit 2 of the Three Mile Island Nuclear Station.

April 11
1979

Presidential Commission established to investigate TMI-2 incident.

April 23
1979

PNUCC forecasts 3.6 percent compound annual average energy load growth for the period 1970 to 1980.

July 1
1979

Supply System announces potential budget increases of 23 percent, 7 percent, 21 percent, and 13 percent, respectively for WNP Nos. 1, 2, 3, and 4/5.

July 30
1979

GAO report, comparing costs of Supply System plants to other investor-owned and municipal utility nuclear plant construction projects, finds Supply System project capital costs to be higher than others.

July
1979 Construction budgets for FY 1980 are adopted as follows:

Project	Financing	Commercial Operation
WNP No. 1	$1,922,000,000	December 1983
2	$1,440,000,000	September 1981
3	$1,378,000,000	December 1984
4/5	$5,075,000,000	July 1985/June 1986
Total	$9,815,000,000	

September 4
1979 GAO issues report criticizing BPA oversight of Supply System projects and recommending improvements.

October 2
1979 NRC instructs nuclear utilities to begin incorporating first set of TMI-2 design changes in project design.

October 5
1979 BPA publishes proposed policy for allocating Federal power after July 1, 1983.

November
1979 Supply System stops work on key WNP No. 2 work components (sacrificial shield wall and pipe whip restraints) because of irregularities in records and in conformance of work to design requirements.

December 20
1979 BPA raises firm power rates to produce an 88 percent revenue increase.

February 8
1980 Neil Strand, Managing Director of the Supply System, resigns and Board begins search for replacement.

February 20
1980 Washington State Senate Committee on Energy and Utilities is granted subpoena power to inquire into the construction of the Supply System projects.

April 4
1980 GAO issues a report at the request of Congressman Weaver estimating that an amount of conservation equivalent to WNP Nos. 4 and 5 could be purchased at a cost less than the $4 billion required to complete the projects.

April 25
1980 A Memorandum of Understanding between the Supply System and BPA is executed, defining BPA's oversight role in greater detail.

May 16
1980 NRC approves report consolidating recommended and required corrective actions to be taken by nuclear plant owners. Supply System undertakes rework and design changes.

June 2
1980 Craftsmen begin withholding services at WNP Nos. 1, 2, and 4.

June 17
1980 NRC issues report finding defects requiring major repairs in the WNP No. 2 sacrificial shield wall and proposes fines aggregating $61,000. (Later adjusted to $59,500).

July 25
1980 Supply System adopts FY 1981 construction budgets as follows:

Project	Financing	Commercial Operation
WNP No. 1	$2,155,000,000	June 1985
2	$1,986,000,000	January 1983
3	$1,822,000,000	June 1986
4/5	$7,231,000,000	June 1986/June 1987
Total	$13,194,000,000	

August 1
1980 Mr. Robert Ferguson is appointed Managing Director of the Supply System.

August 22
1980 The Supply System Administrative Auditor issues a report critical of the Supply System method of contracting.

August 25
1980 Ninth Circuit Court of Appeals affirms NRDC judgement requiring final EIS before BPA undertakes Phase II activities.

September 2
1980 PNUCC forecasts 3.1 percent compound annual average energy load growth for the period 1981 to 1991.

November
1980 Labor disputes, which began on June 2, 1980, are resolved and work force returns.

December 1
1980 Supply System announces tentative revisions to 1981 construction budgets as follows:

Project	Additional Financing	Total	Delay	Commercial Operations
WNP No. 1	$244,000,000	$2,399,000,000	8 mos.	Feb., 1986
No. 2	$181,000,000	2,167,000,000	8 mos.	Sept., 1983
No. 3	$103,000,000	1,925,000,000	3 mos.	Sept., 1986
No. 4/5	$593,000,000	$7,824,000,000	8 mos./	Feb., 1987/Sept., 1987
Total	$1,121,000,000	$14,315,000,000	3 mos.	

December 5 1980	The Pacific Northwest Electric Power Planning and Conservation Act is enacted authorizing BPA, among other things, to acquire major resources under certain conditions.
January 1981	Supply System contracts with Bechtel Power Corporation for construction management services at WNP Nos. 1, 2, and 4.
January 7 1981	Initiative petition No. 394 filed with Washington Secretary of State.
January 12 1981	Washington Senate Energy and Utilities Committee delivers report to legislature listing Supply System construction management deficiencies and recommending corrective action.
January 23 1981	BPA completes and files "Role EIS".
January 30 1981	BPA advises its customers that, if such customer plans to acquire its full requirements under a new power sales contract and was planning to meet a portion of these requirements from its own resources prior to passage of the Regional Act, BPA considers it reasonable to acquire an option on such resources. By March 4, 1981, 94 percent of the participants' shares (69 participants) in WNP Nos. 4 and 5 are offered to BPA.
March 2 1981	New site labor agreements between contractors and unions on the WNP Nos. 3 and 5 site in Satsop County, Washington take affect and are expected to provide labor stability.
March 19 1981	U.S. District Court dismisses, without prejudice, lawsuits filed by City of Portland challenging the validity of the net-billing contracts.
April 28 1981	Regional Power Council holds first meeting.
May 1981	Washington Legislature authorizes a study of the cost-effectiveness of and alternatives to WNP Nos. 4 and 5.
May 29 1981	The Supply System Managing Director recommends a construction work slowdown on WNP Nos. 4 and 5 and releases preliminary 1982 construction budget estimates.

May 31 1981	NRC releases hold on WNP No. 2 safety related work.
June 1981	PNUCC forecasts 3.2 percent compound annual average energy load growth for the period 1982 to 1992. Negotations on Option Agreements stopped in face of WNP Nos. 4 and 5 financing problem.
June 11 1981	Moody's Investors Services drops rating on WNP Nos. 4 and 5 bonds from A1 to Baa1.
June 18 1981	The Board of Directors of the Supply System, acting upon the recommendation of the Managing Director, authorizes a construction slowdown on WNP Nos. 4 and 5. The reasons for such construction slowdown are uncertainty regarding the Supply System ability to finance continued construction of WNP Nos. 4 and 5 and uncertainty concerning the need for the capability of WNP Nos. 4 and 5.
June 19 1981	Standard and Poor's Corporation drops WNP Nos. 4 and 5 bond rating from A+ to A.
July 1 1981	BPA increases firm power rates to preference customers to produce a 59 percent increase in revenues.
July 1981	A report prepared for the PNUCC by Hittman Associates Inc., forecasting regional energy requirements based upon a projection of conservation savings, predicts an energy growth rate of 2.6 percent per year from 1980 to 1990.
July 23 1981	Governors of Oregon and Washington appoint panel of business leaders to study the regional impacts of WNP Nos. 4 and 5 on the economy, governments, utilities, and ratepayers of the region.

July 25
1981 Supply System Board approves 1982 Project Construction Budgets as follow:

Budget Comparisons
(Dollars in Millions)

	Total Est. Costs at Completion			Supply System Financing Reqmts.		
	1982	1981		1982	1981	
Project	Budget	Budget	Increase	Budget	Budget	Increase
No. 1(4)	$ 4,268	$ 2,736	$ 1,532	$ 3,190	$ 2,155	$ 1,035
No. 2	3,216	2,467	749	2,506	1,986	520
No. 3	4,532	3,130	1,402	2,458	1,822	636
Nos. 4/5(5)	11,771	7,615	4,156	11,179	7,231	3,948
Totals	$ 23,787	$15,948	$ 7,839	$19,333	$13,194	$ 6,139

Nuclear Project	1981 Budget Commercial Operation Date	Schedule Extension (Months)	1982 Budget Commercial Operation Date
No. 1	June 1985	12	June 1986
No. 2	January 1983	13	February 1984
No. 3	June 1986	6	December 1986
No. 4	June 1986	12	June 1987
No. 5	June 1987	6	December 1987

July 27
1981 BPA approves purchase of certain nuclear fuel materials and services from WNP Nos. 4 and 5 by WNP No. 1 for approximately $100,000,000.

August 27
1981 WNP Nos. 4 and 5 Participants Committee adopts a resolution seeking commitment from the participants to pay 50 percent of the debt service on outstanding bonds earlier than required by contract, among other things, in order to allow continued financing of WNP Nos. 4 and 5.

August 28
1981 BPA offers new power sales contracts pursuant to the Regional Act which would require it to meet any utility customer's full electrical requirements. Each offeree has one year in which to accept.

September
1981 Governors' Panel recommends that a plan to preserve WNP Nos. 4 and 5 as regional assets be developed and that termination be avoided.

	Washington law enacted required Supply System Executive Committee to be restructured as an eleven member Executive Board with four outside members by October 26, 1981.
September 25 1981	Supply System Board of Directors initiates program to extend the construction and preserve the assets of WNP Nos. 4 and 5 based upon minimization of costs.
October 1981	Representatives of the 4-5 Participants, certain of Bonneville's direct service industrial customers ("DSI's") and three investor-owner utilities ("IOU's") agree to certain general principles for the development of a program to provide funds to preserve the assets of WNP Nos. 4 and 5 through June 1983. In order to permit time for the development of necessary contractual arrangements to implement such a preservation program and to meet committment and cash flow requirements of WNP Nos. 4 and 5, certain of the 4-5 Participants, the IOU's and the DSI's advanced to the Supply System an aggregate of $60,000,000 on October 30 and December 2, 1981. Such advances are secured by WNP Nos. 4 and 5 revenue notes due on July 1, 1984 and subordinated to debt service payable on the outstanding WNP Nos. 4 and 5 bonds.
October 23 1981	Four outside directors are appointed to new Supply System Executive Board.
October 30 1981	New Supply System Executive Board holds first meeting.
November 2 1981	NRC releases majority of remaining stopped work on WNP No. 2.
November 3 1981	Initiative No. 394 is approved by 59 percent of Washington State voters.
November 3 1981	Results of the PNUCC econometric forecasting model, revised at the request of the Regional Power Council, predicts a mean increase in regional electric energy requirements of 2.5 percent over the period 1980 through 1999 compared to 3.2 percent as published in June 1981.
December 4 1981	Trustees for the net-billed project bond funds file suit challenging the constitutionality of Initiative No. 394 alleging, among other things, that the initiative impairs existing contracts.

December 22 1981	Three residents of the City of Springfield, Oregon commenced a lawsuit in Lane County Circuit Court against the City of Springfield, Oregon and the Supply System. The plaintiffs allege that Springfield exceeded its constitutional, statutory and charter authority in the execution and continued performance of its Participants' Agreement. The plaintiffs ask the Court, among other things, to declare null and void and to enjoin the performance of Springfield's Participants' Agreement. The Supply System and Springfield defend this lawsuit. Additional parties allege constitutional and statutory violations with respect to their utility's 4-5 Participants' Agreements similar to those raised by the Springfield residents, and contend that such Participants' Agreements are invalid and unenforceable.
January 1982	Participants do not come forward with $150 million in loan commitments necessary to mothball WNP Nos. 4 and 5 for 2 years. Ferguson recommends, and the Supply System Board of Directors approves, controlled termination of the two plants.
January 7 1982	Moody's Investors Service suspends rating on all outstanding WNP Nos. 4 and 5 bonds.
January 15 1982	Three remaining outside directors on Supply System Executive Board resign citing 4-5 Participants rejection of the program for extended construction delay of WNP Nos. 4 and 5 and the ambiguous division of authority between the Executive Board and the full Board for management of the Supply System's nuclear construction program.
January 22 1982	Supply System Board of Directors terminates WNP Nos. 4 and 5 upon the recommendation of the Managing Director.
January 22 1982	Standard and Poor's lowers WNP Nos. 4/5 bond ratings from A1 to Baa1.

January
1982 Supply System performs a mid-year update of WNP Nos. 1, 2, and 3 to assess the impacts of higher costs resulting from the termination of WNP Nos. 4 and 5 and higher than expected interest rates as follows:

NET BILLED PROJECTS
Status, Schedules and Financing Requirements
(Dollars in Millions)

	Construction Percent Complete as of			Supply System Financing Requirements				
Project	July 1 1981	Jan. 1 1982	Operation Date	1982 Project Budget	Mid-Year Update Increase	Mid-Year Update	Bonds Issued	Bonds to Be Issued
No. 1	41%	53%	June 1986	$3,190	$418	$3,608	$1,770	$1,838
No. 2	86	88	Feb. 1984	2,506	55	2,561	1,695	866
No. 3	32	43	Dec. 1986	2,458	304	2,762	1,130	1,632
			Totals . . .	$8,154	$777	$8,931	$4,595	$4,336

February 1
1982 Initiative Petition No. 416 is filed with the Washington Secretary of State. It would require a vote of the people before a utility could raise its rates more than 8 percent in any 12-month period. (Subsequently, sufficient signatures to place the Initiative on the ballot are not obtained.)

February 1
1982 Site labor agreements, expected to increase labor stability, are effective for WNP Nos. 1 and 2.

February 8
1982 Moody's lowers ratings on WNP Nos. 1, 2, and 3 bonds from Aaa to Aa.

February 11
1982 Supply System draws down the last of the bridge loan funds from the 4-5 Participants, direct service industries and investor-owned utilities.

February 22
1982 The United States District Court, Western District of Washington, granted a summary judgment in favor of Western Nuclear, Inc. against the Supply System with respect to a contract for the supply of uranium concentrates for WNP Nos. 1, 4 and 5. Approximately 75 percent of any damage award (estimated at up to $60 million) would be allocable to WNP Nos. 4 and 5. The exact period during which any such damages would be payable is not known. Immediate entry of a judgment could require payment from WNP Nos. 4 and 5 which funds have not been accounted for in termination budget.

March	1982	A study prepared by the Washington Energy Research Center for the Washington State Legislature predicts an average rate of growth of regional electricity sales of 1.5 percent per year for the period 1980 through 2000 with growth rates ranging from 0.8 percent to 2.0 percent.
March	1982	$69 million of the $70.5 in loan commitments required to terminate WNP Nos. 4 and 5 is obtained from participants. Five PUD's in Washington agree to pay additional $1.5 in termination costs.
March	1982	Washington State Legislature passes a law requiring a further restructuring of the Supply System Executive Board to be composed of five members of the Supply System Board and six outside directors.
April	1982	BPA publishes its draft regional electricity forecast which contained a baseline 20 year energy load forecast of 1.7 percent compound annual average growth, and high and low ranges of 2.5 percent to 0.8 percent compound annual average energy growth.
April 1	1982	"Draw Day" when members of Progress Under Democracy (representatives of Washington and Oregon PUD owners) withdraw funds from Seattle First National Bank, one of the banks which had gone to court to challenge Initiative 394. This group believes participants should not pay costs of terminating WNP Nos. 4 and 5.
April 6	1982	Finance Committee of Supply System Executive Board requests BPA to advise it as to the construction and financing schedules for WNP Nos. 1, 2, and 3 which BPA would approve through the Supply System's fiscal year 1983.
April 9	1982	Department of Justice initiates a lawsuit challenging the constitutionality of Initiative No. 394, asserting the rights and interests of BPA.
April 19	1982	BPA recommends to the Executive Board and staff of the Supply System that: (1) the construction of WNP Nos. 2 and 3 proceed at full pace to maintain or improve the existing construction schedules for these projects; (2) the construction completion schedule of WNP No. 1 be extended for a period of up to 5 years; and (3) the Executive Board instructs the staff of the Supply System to prepare a budget and financing plan consistent with these recommendations.

In developing its recommendation, Bonneville performs economic and financial analyses, and consults with regional leaders, concerned individuals, and experts from inside and outside the region. On the basis of these analyses and consultations, Bonneville concludes that from the viewpoint of financing, marketing, resource economics, load/resource balance and contractual considerations, it would be feasible and appropriate to extend the construction schedule of WNP No. 1 for a period up to 5 years.

April 23
1982 A group of twelve rural electric cooperatives who are 4-5 Participants filed suit for a declaratory judgment in the Superior Court of Lewis County, Washington, against the Supply System, two banking institutions as 4-5 bondholders and as representatives of the class of all 4-5 bondholders, and the remaining 4-5 Participants. In such suit the plaintiffs claim that under the terms of the Participants' Agreements (a) the 4-5 Participants are not and will not be liable to the Supply System for debt service on the WNP Nos. 4 and 5 bonds which have been issued to finance construction unless and until WNP Nos. 4 and 5 are completed, (b) costs of decommissioning or termination do not include costs incurred prior to the date of termination, and (c) the 4-5 Participants are not and will not be liable for costs of decommissioning or termination unless and until the Supply System renders a final accounting statement showing a net balance due within the meaning of Section 13 of the Participants' Agreements.

April 29
1982 The Supply System Executive Board votes unanimously to implement BPA's recommendation to stop work on WNP No. 1 up to 5 years.

May
1982 PNUCC forecasts 2.6 percent compound annual average energy load growth for the period 1983 through 1993.

May 1
1982 Extended construction delay of WNP No. 1 is initiated by Supply System.

May 13
1982 The City of Springfield, Oregon commences a lawsuit in Lane County Circuit Court against the Supply System. Springfield alleges that the Supply System breached its Participants' Agreement with Springfield by its failure (i) to properly design WNP Nos. 4 and 5, (ii) to administer contracts with third parties and to enforce workmanlike performance, (iii) to require timely performance by contractors, (iv) to administer labor contracts and (v) to audit financial records.

Springfield further alleges that the Supply System breached its Participants' Agreement with Springfield by terminating WNP Nos. 4 and 5. The lawsuit seeks damages of $57,828,000, the amount estimated by Springfield necessary to meet Springfield's obligations under its Participants' Agreement or, in the alternative, a judgment discharging Springfield from its obligations under its Participants' Agreement. The City of Springfield also alleges that the Supply System breached its agreements with Springfield whereby Springfield advanced $241,155 in October and November 1981 to preserve the assets of WNP Nos. 4 and 5 by not using such advances to avoid termination of such projects and by withholding such advances from Springfield. Springfield seeks the return of such advances in the amount of $241,155.

May 17

1982 Moody's Investors Service drops WNP Nos. 1, 2, and 3 bond ratings from Aa to A1.

May 18

1982 Chemical Bank, the Bond Fund Trustee for WNP Nos. 4 and 5, institutes a lawsuit in the Superior Court of King County, Washington, against the Supply System and the 4-5 Participants. The complaint states that the action is brought to protect the rights of all 4-5 bondholders seeks an early determination of the construction and validity of the resolution securing the WNP Nos. 4 and 5 bonds and the Participants' Agreements and requests a declaration of rights, obligations and other legal relations of the parties under such resolution and Agreements. Judgment is requested by Chemical Bank against the defendants declaring that the 4-5 Participants are obligated to make payments to the Supply System sufficient to insure timely payment of principal of and interest on the WNP Nos. 4 and 5 bonds.

June 29

1982 U.S. District Judge Tanner declares Initiative 394 unconstitutional as it applies to WNP Nos. 1, 2, and 3. However, he delays the effect of his ruling until April 15, 1983, to allow for an appeal.

July 1

1982 Initiative 394 requirement for voter approval prior to bond issue becomes effective. A stipulation of the parties to the 394 suit concurs in a stay of the effect of the District court decision and specifies an expedited schedule for filing appeal briefs. Therefore 394 applies to all five Supply System plants at this time.

July 7

1982 State Attorney General's office and "Don't Bankrupt Washington" appeal Tanner's ruling on 394.

Chronology of Supply System Financings for Project Nos. 1, 2, 3, 4, and 5.
($ in millions)

I. Project Notes

Project	Sale Date	Par Value	Successful Bidder	Interest Cost
WNP-2	01/01/71	$15	Seattle Trust	3.05%
WNP-1	08/24/72	1.5	Rainer Bank	2.45
WNP-2	12/15/72	40	Halsey Stuart	3.50
WNP-1	02/08/73	25	Halsey Stuart	4.25
WNP-3	05/15/73	2	Old National Bank	4.40
WNP-3	10/01/73	29	Smith Barney	4.37
WNP-4/5	03/01/74	2.5	Rainer Bank	4.70
WNP-1	05/22/74	77	Salomon	6.05
WNP-4/5	08/01/74	15	Smith Barney	8.01

II. Project Bonds

Project	Rating	Sale Date	Par Value	Successful Bidder	Interest Cost
WNP-2	A1:AA	06/26/73	$150	Salomon Brothers	5.65%
WNP-2	A1:AA	07/23/74	80	Bache Halsey	7.21
WNP-2	Aa:AA	11/26/74	125	Smith Barney	7.67
WNP-2	Aaa:AAA	03/06/75	125	Salomon Brothers	6.71
WNP-4/5	A1:A	07/24/75	100	Merrill Lynch	7.04
WNP-1	Aaa:AAA	09/18/75	175	Bache Halsey	7.73
WNP-3	Aaa:AAA	12/03/75	150	Smith Barney	7.87
WNP-1	Aaa:AAA	02/04/76	180	Merrill Lynch	6.84
WNP-3	Aaa:AAA	04/13/76	100	Weeden & Company	6.48
WNP-2	Aaa:AAA	06/03/76	120	Salomon Brothers	6.64
WNP-1	Aaa:AAA	08/31/76	180	Merrill Lynch	6.37
WNP-2	Aaa:AAA	11/18/76	200	Bache Halsey	5.87
WNP-4/5	A1:A+	02/23/77	145	Smith Barney	5.93
WNP-4/5	A1:A+	05/24/77	90	Bache Halsey	6.32
WNP-3	Aaa:AAA	07/12/77	230	Salomon Brothers	5.71
WNP-4/5	A1:A+	09/13/77	130	Bache Halsey	5.96
WNP-4/5	A1:A+	01/31/78	150	Salomon Brothers	6.07
WNP-1	Aaa:AAA	03/21/78	180	Merrill Lynch	5.69
WNP-4/5	A1:A+	05/23/78	150	Smith Barney	6.86
WNP-2	Aaa:AAA	07/11/78	180	Salomon Brothers	6.71
WNP-3	Aaa:AAA	09/12/78	200	Merrill Lynch	6.27
WNP-4/5	A1:A+	10/12/78	170	Bache Halsey	6.81
WNP-1	Aaa:AAA	12/05/78	180	Salomon Brothers	6.61
WNP-4/5	A1:A+	02/14/79	175	Merrill Lynch	7.16
WNP-2	Aaa:AAA	03/13/79	180	Smith Barney	6.49
WNP-1	Aaa:AAA	06/19/79	150	First Boston	6.64
WNP-4/5	A1:A+	08/28/79	150	Smith Barney	7.69
WNP-2	Aaa:AAA	10/17/79	125	Merrill Lynch	7.69
WNP-4/5	A1:A+	12/11/79	200	Smith Barney	8.30
WNP-4/5	A1:A+	05/09/80	130	Merrill Lynch*	9.23

*Negotiated Sale-Senior Manager. Competitive bid price was deemed too high by Supply System board, and a negotiated sale was commenced with results shown above.

($ in Millions)

Project	Rating	Sale Date	Par Value	Successful Bidder	Interest Cost
WNP-4/5	A1:A+	07/15/80	$180	Salomon Brothers	9.50%
WNP-1	Aaa:AAA	08/05/80	210	Salomon Brothers	8.87
WNP-4/5	A1:A+	09/23/80	180	Merrill Lynch	10.69
WNP-2	Aaa:AAA	10/21/80	200	First Boston	9.36
WNP-4/5	A1:A+	12/09/80	150	Salomon Brothers	12.44
WNP-4/5	A1:A+	12/09/80	50	Salomon Brothers	11.83
WNP-3	Aaa:AAA	02/11/81	225	Salomon Brothers	10.80
WNP-4/5	A1:A+	03/17/81	170	Merrill Lynch	11.77
WNP-4/5	A1:A+	03/17/81	30	Merrill Lynch	11.06
WNP-1	Aaa:AAA	04/13/81	160	Merrill Lynch	11.30
WNP-1	Aaa:AAA	04/13/81	40	Smith Barney	10.29
WNP-1	Aaa:AAA	09/04/81	315	Merrill Lynch*	14.78
WNP-2	Aaa:AAA	09/04/81	210	Merrill Lynch*	12.45
WNP-3	Aaa:AAA	09/04/81	225	Merrill Lynch*	14.80
WNP-1	Aa:AAA	02/11/82	385	Salomon Brothers*	14.79
WNP-2	Aa:AAA	02/11/82	300	Salomon Brothers*	14.76
WNP-3	Aa:AAA	02/11/82	165	Salomon Brothers*	14.83
WNP-2	A1:AAA	05/20/82	178.72	Goldman Sachs*	13.82
WNP-2	A1:AAA	05/20/82	196.28	Goldman Sachs*	13.89
WNP-3	A1:AAA	05/20/82	290.12	Goldman Sachs*	13.95
WNP-3	A1:AAA	05/20/82	14.83	Goldman Sachs*	13.63

*Negotiated Sale (Senior Lead Manager indicated)

NOTE: All outstanding bonds for Projects Nos. 1, 2, and 3 are rated "AAA" by Standard & Poor's and "A1" by Moody's
All outstanding bonds for Projects Nos. 4/5 are rated "BBB+" by Standard & Poor's; ratings have been suspended by Moody's

JX 3

PROJECT AGREEMENT FOR PROJECT NO. 3

(AUTHENTICATED COPY)

Contract No. 14-03-39100

1-26-73

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

NUCLEAR PROJECT NO. 3

AGREEMENT

executed by the

UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR

acting by and through the

BONNEVILLE POWER ADMINISTRATOR

and

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

(Project Agreement)

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This AGREEMENT, executed September 25, 1973, by the UNITED STATES OF AMERICA (Government), Department of the Interior, acting by and through the BONNEVILLE POWER ADMINISTRATOR (Administrator), and WASHINGTON PUBLIC POWER SUPPLY SYSTEM (Supply System), a municipal corporation of the State of Washington,

WITNESSETH:

WHEREAS in order to achieve the economies of size for the benefit of Supply System's members, the Participants and the other Project Owners, the Project Owners have entered into an agreement simultaneously with this agreement providing that the Project Owners will finance and own the Project and that Supply System will design, construct, operate and maintain the Project on behalf of the Project Owners; and

WHEREAS the Administrator has determined that acquisition of up to 70 percent of Project Capability will assist in attaining the objectives of the Bonneville Project Act, and other statutes which pertain to the disposition of electric power and energy from Government projects in the Pacific Northwest by enabling the Government to make optimum use of the Federal Columbia River Power System, and that the integration of capability of the Project with the generating resources of the Federal Columbia River Power System as provided herein will enable the Administrator to make available additional firm power and energy to meet the needs of his customers; and

WHEREAS the construction of the Project is a part of the Hydro-Thermal Power Program for the Pacific Northwest and this agreement is one of a series of agreements implementing such program; and

WHEREAS Supply System plans to acquire a site for the Project in the State of Washington, acceptable to the Project Owners and the Administrator, and plans, in connection therewith, to enter into certain contracts for the financing, planning, engineering, construction and operation of said plant; and

WHEREAS Supply System and the Companies have entered into short-term Power Sales Agreements simultaneously with this agreement providing for purchase by the Companies of output from the Supply System's Ownership Share of the Project; and

WHEREAS Supply System, the Administrator and the Participants are parties to Net Billing Agreements under which Supply System sells Project Capability to the Participants and under which the Administrator will acquire such Project Capability; and

WHEREAS Supply System is organized under the laws of the State of Washington (Rev. Code of Washington, Ch. 43.52) and is authorized by law to jointly construct, own, acquire and operate works, plants, and facilities for the generation and/or transmission of electric power and energy and to enter into contracts for such purposes and with the Administrator and public and private organizations for the disposition and distribution of electric power and energy produced thereby; and

WHEREAS the Administrator is authorized pursuant to law to dispose of electric power and energy generated at various federal hydroelectric projects in the Pacific Northwest and to enter into related agreements;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Definition and Explanation of Terms.

(a) "Annual Budget" means the budget adopted by Supply System not less than 45 days prior to the beginning of each Contract Year which itemizes the projected costs of Supply System's Ownership Share of the Project applicable to such Contract Year, or, in the case of an amended Annual Budget, applicable to the remainder of such Contract Year. The Annual Budget, as amended from time to time, shall make provision for all such Supply System's costs, including accruals and amortizations, resulting from the ownership, operation (including cost of fuel), and maintenance of the Project and repairs, renewals, replacements, and additions to the Project, including, but not limited to, the amounts which Supply System is required under the Bond Resolution to pay in each Contract Year into the various funds provided for in the Bond Resolution for debt service and all other purposes and shall include the source of funds proposed to be used; provided, however, that the Annual Budget for any portion of a Contract Year prior to the Date of Commercial Operation or September 1, 1981, whichever occurs first, shall include only such amounts as may be agreed upon by Supply System and the Administrator.

(b) "Bonds" means any bond, bonds, or other evidences of indebtedness issued in connection with the Project pursuant to the Bond Resolution (1) to finance or refinance Supply System's Ownership Share of costs associated with planning, designing, financing, acquiring and constructing the Project pursuant to the Bond Resolution and (2) for any other purpose authorized thereby.

(c) "Bond Resolution" means the resolution or resolutions adopted or supplemented by Supply System, as the same may be amended or supplemented, to authorize the Bonds.

(d) "Companies" means the electric utilities or other entities, other than Supply System, that execute and are party to a Power Sales Agreement.

(e) "Construction Budget" means the budget adopted by Supply System which sets forth an estimated schedule of construction expenditures and itemizes all costs related to ownership, design, planning, construction and financing of Supply System's Ownership Share of the Project, as well as any revision or updating thereof during the course of construction.

(f) "Contract Year" (1) means the period commencing on the Date of Commercial Operation, or on January 1, 1981, whichever occurs first, and ending at 12 p.m. on the following June 30, and (2) thereafter means the 12 month period commencing each year at 12 p.m. on June 30, except that the last Contract Year shall end on the date of termination of this agreement.

(g) "Date of Commercial Operation" means the date determined pursuant to Section 1(g) of the Ownership Agreement.

(h) "Net Billing Agreements" means the agreements for the Project entered into by Supply System, the Administrator and each of the Participants (Contracts No. 14-03-39101 through 14-03-39203, inclusive).

(i) "Ownership Agreement" means the Agreement for construction, ownership, and operation of the Project, attached hereto as Exhibit C, as the same may be amended, and as executed by the Project Owners. Any amendment thereto which may affect rights, duties, or costs of the Administrator under the Net Billing Agreements shall require approval by him prior to execution by Supply System.

(j) "Participants" means those entities which are specified in Exhibit A of the Net Billing Agreements, or which become assignees of all or part of any Participant's Share pursuant to such agreements.

(k) "Power Sales Agreements" means the agreements for the short-term sale and purchase of output from Supply System's Ownership Share of the Project, entered into simultaneously with this agreement by Supply System and each of the Companies.

(l) "Project" means the nuclear generating plant and related properties as described in Exhibit A. Exhibit A may be revised from time to time by mutual agreement of the parties, but in any event shall conform to the description of the Project in the Bond Resolution which authorizes the issuance of Bonds in an amount sufficient to pay the costs of acquiring and constructing Supply System's Ownership Share of the Project.

(m) "Project Capability" means the actual electrical generating capability, if any, of the Project at any particular time (including times when the Project is not operable or operating or the operation thereof is suspended, interrupted, interfered with, reduced or curtailed, in each case in whole or in part), less Project station use and losses.

(n) "Project Consultant" means an individual or firm, of national reputation having demonstrated expertise in the field of the matter or item referred to it, appointed among other things, for the resolution of a difference regarding a matter or item referred by Supply System. A different Project Consultant may be appointed for each matter or item referred.

(o) "Project Owners" means Supply System and the electric utilities that execute and are party to the Ownership Agreement.

(p) "Prudent Utility Practice" at a particular time means any of the practices, methods and acts, which in the exercise of reasonable judgment in light of the facts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto) known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice shall apply not only to functional parts of the Project but also to appropriate structures, landscaping, painting, signs, lighting, other facilities and public relations programs reasonably designed to promote public enjoyment, understanding and acceptance of the Project. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts. In evaluating whether any matter conforms to Prudent Utility Practice, the parties and any Project Consultant shall take into account (1) the fact that Supply System is a municipal corporation and operating agency under the laws of the State of Washington with the statutory duties and responsibilities thereof and (2) the objective to integrate the entire Project Capability with the generating resources of the Federal Columbia River Power System, the Project Owners (except Supply System) and the Companies, to achieve optimum utilization of the resources of such systems taken as a whole, and to achieve efficient and economical operation of such systems. Any practice, method or act which pursuant to the Ownership Agreement is determined to be Prudent Utility Practice shall be deemed to be Prudent Utility Practice hereunder.

(q) "Supply System's Ownership Share" means 0.70 or such other decimal fraction as may be determined under the Ownership Agreement.

2. Exhibits. Exhibits A through C are by this reference incorporated herein and made a part of this agreement. Supply System shall be the Contractor as that term is used in Exhibit B.

3. Term of Agreement. This agreement shall be effective upon execution and delivery and shall terminate when the Net Billing Agreements terminate.

4. Representation of the Administrator. Supply System shall appoint a member designated by the Administrator to the Committee established pursuant to the Ownership Agreement. During the period the Administrator is assigned any Participant's Share or portion thereof under the Net Billing Agreements, Supply System, in accordance with section 3 of the Ownership Agreement, shall specify that the Administrator's representative on the Committee shall have the right to vote the lesser of 50 percent of Supply System's Ownership Share, or the sum of the Participants' Shares assigned to the Administrator under the Net Billing Agreements at the beginning of the Contract Year. All Supply System costs and expenditures related to the Project made at the written request of the Administrator, which are not Costs of Construction or Annual Costs pursuant to the Ownership Agreement, shall be billed separately for payment by the Administrator under section 7 of the Net Billing Agreements.

5. Design, Construction, Operation, and Maintenance of the Project.

(a) Supply System shall perform its duties and exercise its rights under the Ownership Agreement and under this agreement in accordance with Prudent Utility Practice.

(b) Supply System shall keep the Administrator informed of all significant matters with respect to construction or operation of the Project (including without limitation, plans, specifications, engineering studies, environmental reports, budgets, fuel plans, estimates and schedules) where practicable in time for the Administrator to comment thereon before decisions are made, and shall confer with him during the development of Supply System's proposals for such matters when practical to do so. Upon request by the Administrator, Supply System shall furnish or make available to him with reasonable promptness, and at reasonable times, any and all other information relating to the planning, construction, operation or maintenance of the Project.

(c) Subject to provisions of section 2(e) of the Ownership Agreement, the Administrator may, at his option and at Government expense, maintain a representative at the Project site during the construction of the Project. Such representative shall have no authority regarding administration or inspection of the Project construction.

(d) The Administrator shall use his best efforts to construct, operate and maintain necessary facilities to interconnect the Project with the Federal Columbia River Power System so as to be ready to receive Project generation on or before the initial test and operation of the Project, presently scheduled for April 1, 1981.

(e) The Administrator shall have the right to purchase upon reasonable terms and conditions energy produced during any test operation of the generating unit of the Project, upon reasonable notice to Supply System of his intention to do so, given prior to the commencement of such test operation. If the Administrator does not exercise such right, he shall accept delivery into the Federal Columbia River Power System and, upon reasonable terms and conditions, shall deliver any such energy not purchased by him to Supply System or its assignee at mutually agreed points.

(f) During any hour in which the Project does not generate electric power and energy for station use and for losses to the high-voltage terminals of the Project substation, the Administrator shall furnish his pro rata share of such electric power and energy, based on the sum of decimal fraction shares then assigned to him under the Net Billing Agreements, to the Supply System at the point of delivery specified in the Net Billing Agreements; provided, however, that deliveries of such electric power and energy may be interrupted or reduced in the case of system emergencies, or in order to make repairs, replacements or necessary additions to or perform maintenance on that portion of the Federal Columbia River Power System necessary to provide such electric power and energy.

6. Financing of the Project.

(a) Supply System shall, in good faith and with due diligence, use its best efforts to issue and sell Bonds to finance Supply System's Ownership Share of the costs of the Project and the completion thereof, as such costs are defined in the Bond Resolution and, subject to the provisions of section 7(b), to finance Supply System's Ownership Share of costs of any capital additions, renewals, repairs, replacements or modifications to the Project which Supply System is required to pay pursuant to the Ownership Agreement; provided, however, that in each such case such Bonds may then be legally issued and sold.

Supply System may, after submitting its financing proposal to the Administrator, or shall, whenever requested by the Administrator, adopt proceedings to authorize the issuance and sale of additional Bonds to refund outstanding Bonds prior to maturity in accordance with the Bond Resolution; provided, however, that if in the judgment of Supply System or the Administrator no substantial benefits or economies will be achieved by such refunding, the matter shall be referred to the Project Consultant as provided in section 8.

(b) Notwithstanding any other provisions of this agreement, the Bond Resolution shall be subject to approval of the Administrator.

7. Budget and Accounting Procedures.

(a) Construction Budget. The Administrator has heretofore reviewed Supply System's Construction Budget in connection with the Project. Promptly after approval of an updated or revised construction budget pursuant to the Ownership Agreement, Supply System shall submit to the Administrator its revised Construction Budget. Such budget shall include Supply System's share of construction costs pursuant to the Ownership Agreement and shall separately itemize all Supply System's other costs related to construction and financing of Supply System's Ownership Share of the Project. Updated Construction Budgets for the succeeding calendar year and revised Construction Budgets for the current calendar year shall become effective unless disapproved by the Administrator within thirty days, and seven days, respectively, after submittal. Any item disapproved shall be referred to the Project Consultant as provided in section 8.

A monthly Construction Budget report shall be prepared by Supply System and filed with the Administrator showing by major plant accounts or contracts, the cumulative amounts committed and the cumulative expenditures to date of each such report.

(b) Annual Budget. At least 90 days prior to the expected Date of Commercial Operation, Supply System shall submit to the Administrator a proposed Annual Budget for the period from the expected Date of Commercial Operation to the next succeeding July 1, and if the Date of Commercial Operation occurs subsequent to April 1 in a calendar year, a similar Annual Budget for the next succeeding Contract Year. Thereafter, on or before April 1 of each year Supply System shall submit to the Administrator a similar Annual Budget for the next succeeding Contract Year, which budget shall take into account the cumulative difference between total moneys received and expenditures for the prior Contract Year and provide for adjustment, as necessary, of the appropriate working cash fund.

The Annual Budget shall include Supply System's Ownership Share of operating costs according to the operating budget adopted pursuant to the Ownership Agreement, and Supply System's share of anticipated fuel and other costs pursuant to the Ownership Agreement and shall separately itemize all of Supply System's other costs related to the Supply System's Ownership Share of the Project. All taxes imposed and required by law to be paid with respect to Supply System's Ownership Share, and which are due and payable in a Contract Year, shall be included in the Annual Budget for that Contract Year as a Project cost. To the extent Supply System is permitted by law to negotiate for payments in lieu of taxes or other negotiated payments to state or local taxing entities, the Annual Budget shall also include the amounts of such negotiated payments; provided, however, that Supply System shall not agree to such negotiated payment if in any Contract Year the sum of such negotiated payments and taxes imposed by law would exceed the total amount of ad valorem taxes that Supply System would have paid in that year to such taxing entities if Supply System's Ownership Share of the Project or portion thereof, within the boundaries of each such taxing entity, were subject to ad valorem taxes and its valuation for tax purposes were added to the valuation of the property subject to ad valorem taxes by such taxing entity, but with its millage rate reduced so that the amount of ad valorem taxes raised would be unchanged.

If in any Contract Year the amounts in the Annual Budget for renewals, repairs, replacements, and betterments, and for capital additions necessary to achieve design capability or required by governmental agencies (Amounts for Extraordinary Costs), whether or not such amounts are Costs of Operation or Costs of Construction as defined in the Ownership Agreement, exceed the amount of reserves, if any, maintained for such purpose pursuant to the Bond Resolution plus the proceeds of insurance, if any, available by reason of loss or damage to the Project, by the lesser of:

(1) an amount of $3,000,000 or

(2) an amount by which the amount of the Administrator's estimate of the total of the Administrator's net billing credits available in such Contract Year to Participants pursuant to section 7(a) of the Net Billing Agreements and the amounts of such reserves and insurance, if any, exceeds the Annual Budget for such Contract Year exclusive of Amounts for Extraordinary Costs.

Supply System shall, in good faith, use its best efforts to issue and sell Bonds to pay such excess in accordance with section 6(a).

Notwithstanding any other provision of this agreement, Supply System's Ownership Share of costs incurred by Supply System in an emergency or to protect the safety of the Project or the public, and unbudgeted expenditures necessary in the normal course of business for the continued safe operation and maintenance of the Project prior to approval of the Annual Budget or revised Annual Budget, shall be added to the Annual Budget as incurred. Promptly after any such occurrence, and prior to expenditures of any other funds not contemplated in the effective Annual Budget, Supply System shall submit a revised Annual Budget to the Administrator.

The Annual Budget and revised Annual Budget shall become effective unless disapproved by the Administrator within thirty days, and seven days, respectively, after submittal. Any item disapproved shall be referred to the Project Consultant as provided in section 8.

(c) Accounting. Supply System shall keep up-to-date books and records showing all financial transactions and other arrangements made in carrying out the terms of this agreement. Such books and records shall contain information supporting the allocation of Supply System's indirect costs associated with the Project. Such books and records shall be retained by

Supply System for three years and shall be made available for inspection and audit by the Administrator at any reasonable time.

All accounts shall be kept so as to permit conversion to the applicable system of accounts prescribed for electric utilities by the Federal Power Commission.

Any contract with any consultant or contractor of Supply System providing for reimbursement of costs or expenses of any kind shall require the keeping and maintenance of books, records, documents, and other evidence pertaining to the costs and expenses incurred or claimed under such contract to the extent and in such detail as will properly reflect all costs related to this agreement and shall require such books, records, documents and evidence to be made available to the Administrator at all reasonable times for review and audit for a period of three years after final settlement of the applicable contracts.

(d) All moneys received on account of Supply System's Ownership Share of the Project which are surplus to a current year's operating and capital expenses and Bond Resolution requirements shall be invested by Supply System in accordance with the Bond Resolution until such surplus moneys can be appropriately applied in a future Contract Year.

8. Administrator's Approval and Project Consultant.

(a) All proposals of Supply System, including but not limited to, budgets, plans, actions, activities or matters submitted to the Administrator under any provisions of this agreement shall include itemized cost estimates and other detail sufficient to support a comprehensive review, including but not limited to, a copy of all supporting reports, analyses, recommendations, or other documents pertaining thereto. If the Administrator does not disapprove the proposal within the time specified, or if no time is specified, within seven days after receipt, the proposal shall be deemed approved. Any proposal disapproved shall be segregated so that the exact items of difference are identified and shall become effective immediately as to items not disapproved.

(b) Disapproval by the Administrator shall be given in writing and, except as provided in section 6(b), shall be based solely on whether the proposal or item is consistent with Prudent Utility Practice. Such disapproval shall describe in what particular the proposal or item is not consistent with Prudent Utility Practice and shall at the same time recommend what would meet that standard.

When any proposal or item is so disapproved by the Administrator, Supply System shall adopt the suggestion of the Administrator or within seven days after receipt of such disapproval, shall appoint a Project Consultant acceptable to the Administrator to review the proposal or item in the manner described in this section. If the parties shall not agree upon the selection of the Project Consultant, Supply System shall promptly request the Chief Judge of the United States District Court for the judicial district of Washington in which the Project is located to appoint the Project Consultant.

(c) The Project Consultant shall consider all written arguments and factual materials which have been submitted to it by either party within the ten days following its appointment, and as promptly as possible after the expiration of such period, make a written determination as to whether the proposal or item disapproved by the Administrator referred to it by Supply System would or would not have been consistent with Prudent Utility

Practice. If the Project Consultant determines that the proposal or item referred to it was not consistent with Prudent Utility Practice it shall, at the same time, recommend what would, under the same circumstances, have met such test.

Proposals or items found by the Project Consultant to be consistent with Prudent Utility Practice shall become immediately effective. Proposals or items found by the Project Consultant to be inconsistent with Prudent Utility Practice shall be modified to conform to the recommendation of the Project Consultant or as the parties otherwise agree and shall become effective as and when modified.

(d) All costs incurred by Supply System for or by reason of employing a Project Consultant under this agreement and the Net Billing Agreements and all reasonable costs of Supply System related to presentations to the special board which may be convened pursuant to the Ownership Agreement, shall be a cost of the Project.

(e) If any proposal or item referred to the Project Consultant has not been resolved and will affect the continuous operation of the Project, Supply System shall continue to operate the Project. Supply System may proceed with the item (1) as proposed by it, or (2) as proposed by the Administrator, or (3) as modified by mutual agreement by Supply System and the Administrator prior to the time such item affects operation of the Project; provided, however, that if Supply System proceeds with a disapproved item reviewable under this agreement and if the determination made by the Project Consultant is that the item is not consistent with Prudent Utility Practice, Supply System shall bear any net increase in the cost of construction or operation of the Project resulting from such item without charge to Supply System's Ownership Share of the Project in the Annual Budget to the extent such item was inconsistent with what the Project Consultant determined would under such circumstances have met such test. Notwithstanding other provisions of this section 8(e), whenever a proposal has been referred to the Project Consultant, Supply System shall operate in accordance with Supply System's proposals until such proposal has been resolved by the Project Consultant, whenever Supply System determines that the Administrator's proposals would create an immediate danger to the safe operation of the Project.

(f) The Administrator's approval or failure to disapprove any plan, proposal or item pursuant to the terms of this agreement shall not render the Government, its officers, agents, or employees, liable or responsible for any injury, loss, damage, or accident resulting from ownership, design, construction, operation, or maintenance of the Project.

(g) Supply System shall not proceed with the following elective items under the Ownership Agreement without the concurrence of the Administrator's representative on the Committee; (1) notice to repair damage to the Project, pursuant to section 16(b), (2) a capital addition to the Project pursuant to section 18, and (3) construction of the Project pursuant to section 22(b). The Administrator shall evidence his approval of any such items in writing and Supply System's share of costs associated with any item so approved shall become Project costs related to Supply System's Ownership Share.

(h) Items subject to review by the Committee under the Ownership Agreement shall not be reviewable hereunder.

(i) The word "item" as used in this section means the item described including the cost specified therefor.

9. Insurance. Supply System shall keep the Administrator informed of the insurance carried pursuant to the Ownership Agreement and shall

purchase additional insurance requested by the Administrator, at the Administrator's expense, to the extent insurance may be available. The proceeds from such requested insurance shall be disbursed as directed by the Administrator.

10. Permits. Subject to any regulations of the Atomic Energy Commission pertaining to the Project, if by the terms of this agreement any equipment or facility of either party is, or is to be, located on the property of the other, a permit to install, test, maintain, inspect, replace, and repair during the term of this agreement and to remove at the expiration of said term such equipment and facility, together with the right of ingress to and egress from the location thereof at all reasonable times in such term, is hereby granted to the other party.

11. Ownership of Facilities.

(a) Ownership of any and all equipment, and all salvable facilities, installed by the Administrator or the Project Owners on the property of the oth shall be and remain in the installing party.

(b) Each party shall identify all movable equipment and to the extent agreed upon by the parties, all other salvable facilities which are installed by such party on the property of the other, by permanently affixing thereto suitable tags, stencils, stamps, or other markers plainly stating the name of the owner of the equipment and facilities so identified.

12. Inspection of Project Facilities. The Administrator may, but shall not be obligated to, inspect the Project at any reasonable time, but such inspection, or failure to inspect, shall not render the Government, its officers, agents, or employees, liable or responsible for any injury, loss, damage, or accident resulting from defects in the Project.

13. *Assignment of Agreement*. This agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the parties to this agreement; *provided*, *however*, that neither this agreement, nor any interest therein shall be transferred or assigned by (a) Supply System to any entity other than the United States or an agency thereof, without written consent of the Administrator, or (b) the Administrator to any party other than the United States, or an agency thereof, without written consent of Supply System.

14. *Applicability of Other Instruments*. It is recognized by the parties hereto that Supply System in the ownership, construction and operation of the Project must comply with the requirements of the Ownership Agreement, the Bond Resolution and all licenses, permits and regulatory approvals necessary for such ownership, construction and operation, and it is, therefore, agreed that this agreement is made, and referrals to the Project Consultant hereunder shall be, subject to the terms and

provisions of the Bond Resolution and all such licenses, permits, and regulatory approvals.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in several counterparts.

UNITED STATES OF AMERICA
Department of the Interior

(SEAL)

BY S/ DONALD PAUL HODEL
Bonneville Power Administrator

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

(SEAL)

BY S/ J. J. STEIN

TITLE Managing Director

ATTEST:

BY S/ ED FISCHER

TITLE Chairman
Executive Board

Certificate

I, Donald W. Franzwa, Head of Contracts, Branch of Customer Service, Division of Power Management, Bonneville Power Administration, do hereby certify that the within and foregoing is a true, complete and conformed composite copy of Contract No. 14-03-39100 and that signed counterpart originals are on file with the Bonneville Power Administration, each signed by one or more of the parties thereto which taken together bear the signatures of all the parties thereto.

Date OCT 18 1973 S/ DONALD W. FRANZWA

EXHIBIT A

PROJECT CHARACTERISTICS

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

NUCLEAR PROJECT NO. 3

The Washington Public Power Supply System's Nuclear Project No. 3 is expected to have a net electrical plant capability of approximately 1,100 MW.

It will be located on a site in the State of Washington acceptable to the Project Owners and the Administrator.

The plant and associated facilities will include a nuclear steam supply system, fuel and reactor coolant system with all related containment structures, safety features, instrumentation, control and auxiliary systems; turbine-generator, condensers and circulating water cooling systems, facilities and piping; electrical and mechanical systems and other related equipment and facilities; electrical facilities required to deliver the output of the Project to the BPA transmission system at a point to be determined by the Supply System and the Administrator; and other structures, shops, warehouses, construction facilities, offices, equipment or facilities required in the construction, maintenance and operation of the Project.

A complete description of the Project will be prepared after bids have been received and evaluated and awards have been made for major plant components

(12-3-69)

PROVISIONS REQUIRED BY STATUTE OR EXECUTIVE ORDER

1. Contract Work Hours and Safety Standards.

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (Public Law 87-581, 76 Stat. 357-360, as amended) and is not covered by the Walsh-Healey Public Contracts Act (41 U. S. C. 35-45), is subject to the following provisions and to all other provisions and exceptions of said Contract Work Hours and Safety Standards Act.

(a) No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in any workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) In the event of any violation of the provisions of subsection (a), the Contractor and any subcontractor responsible for such violation shall be liable to any affected employee for his unpaid wages. In addition, such Contractor or subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the provisions of subsection (a), in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of forty hours in a workweek without payment of the required overtime wages.

(c) The Administrator may withhold, or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor, the full amount of wages required by this contract and such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in subsection (b).

(d) No contractor or subcontracter contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation based on proceedings pursuant to section 553 of title 5, United States Code, provided that such proceedings include a hearing of the nature authorized by said section.

(e) The Contractor shall require the foregoing subsections (a), (b), (c), (d) and this subsection (e) to be inserted in all subcontracts.

(f) The Contractor shall keep and maintain for a period of three (3) years from the completion of this contract the information required by 29 CFR § 516.2(a). Such material shall be made available for inspection by authorized representatives of the Government, upon their request, at reasonable times during the normal work day.

2. Convict Labor. The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

3. Equal Opportunity. Unless exempted pursuant to the provisions of Executive Order 11246 of September 24, 1965 and the rules, regulations and relevant orders of the Secretary of Labor thereunder, during the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Administrator setting forth the provisions of this equal opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Administrator, advising the labor union or worker's representative of the Contractor's commitments under this equal opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Administrator and the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Contractor's noncompliance with the equal opportunity clause of this contract or with any of such rules regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Administrator may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Administrator, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. Interest of Member of Congress. No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to such contract if made with a corporation for its general benefit.

JX 7

NET BILLING AGREEMENT FOR PROJECT NO. 3
(City of Seattle, Washington)

(AUTHENTICATED COPY)

Contract No. 14-03-39181

11-27-72

WASHINGTON PUBLIC POWER SUPPLY SYSTEM
NUCLEAR PROJECT NO. 3
AGREEMENT

executed by the

UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR

acting by and through the

BONNEVILLE POWER ADMINISTRATOR

and

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

and

CITY OF SEATTLE, WASHINGTON

(Net Billing Agreement)

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This AGREEMENT, executed September 25, ~~1972~~ 1973, by the UNITED STATES OF AMERICA (Government), Department of the Interior, acting by and through the BONNEVILLE POWER ADMINISTRATOR (Administrator), and WASHINGTON PUBLIC POWER SUPPLY SYSTEM (Supply System), a municipal corporation of the State of Washington, and the CITY OF SEATTLE, WASHINGTON, a municipal corporation of the State of Washington (Participant),

WITNESSETH:

WHEREAS in order to achieve the economies of size for the benefit of Supply System's members, the Participants and the other Project Owners, the Project Owners have entered into an agreement simultaneously with this agreement providing that the Project Owners will finance and own the Project and that Supply System will design, construct, operate and maintain the Project on behalf of the Project Owners; and

WHEREAS Supply System and the Companies have entered into short-term Power Sales Agreements simultaneously with this agreement providing for purchase by the Companies of output from Supply System's Ownership Share of the Project; and

WHEREAS the Participant proposes to purchase the Participant's Share from Supply System for assignment to the Administrator hereunder and the Administrator proposes to acquire such Participant's Share; and

WHEREAS Supply System and the Participant have each determined that the sale by Supply System to the Participant of the Participant's Share and assignment thereof to the Administrator as herein provided will be beneficial to it by reduci the cost of and increasing the amounts of firm power and energy which will be available to serve its members or customers in the future; and

WHEREAS the Administrator has determined that the acquisition of the Participant's Share as herein provided will assist in attaining the objectives of the Bonneville Project Act and other statutes which pertain to the disposition of electric power and energy from Government projects in the Pacific Northwest by enabling the Government to make optimum use of the Federal Columbia River Power System, and that the integration of capability of the Project acquired hereunder with the generating resources of the Federal Columbia River Power System as provided herein will enable the Administrator to make available additional firm power and energy to meet the needs of his customers; and

WHEREAS the construction of the Project is a part of the Hydro Thermal Power Program for the Pacific Northwest and this agreement is one of a series of agreements implementing such program; and

WHEREAS the Administrator will pool electric power and energy acquired hereunder with other electric power and energy available to the Administrator fro the Federal Columbia River Power System so that any costs or losses associated wit acquiring such electric power and energy will be borne by the Administrator's ratepayers through rate adjustements if necessary; and

WHEREAS the Administrator and the Participant are parties to agreements which require payments by the Participant to the Administrator which may be used to offset payments by the Administrator to the Participant hereunder under a net billing procedure; and

WHEREAS Supply System and the Administrator propose to enter into the Project Agreement simultaneously with this agreement which will provide among other things for relationships between Supply System and the Administrator with respect to Project construction, operation, maintenance and budgets; and

WHEREAS Supply System and the Administrator propose to enter into agreements with the other Participants containing terms and conditions substantially identical to those specified herein; and

WHEREAS Supply System is organized under the laws of the State of Washington (Rev. Code of Washington, Ch. 43.52) and is authorized by law jointly to construct, own, acquire and operate works, plants, and facilities for the generation and/or transmission of electric power and energy and to enter into contracts for such purposes and with the Administrator and public and private organizations for the disposition and distribution of electric power and energy produced thereby; and

WHEREAS the Administrator is authorized pursuant to law to dispose of electric power and energy generated at various federal hydroelectric projects in the Pacific Northwest and to enter into related agreements;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Definition and Explanation of Terms.

(a) "Annual Budget" means the budget adopted by Supply System not less than 45 days prior to the beginning of each Contract Year which itemizes the projected costs of Supply System's Ownership Share of the Project applicable to such Contract Year, or, in the case of an amended Annual Budget, applicable to the remainder of such Contract Year. The Annual Budget, as amended from time to time, shall make provision for all such Supply System's costs, including accruals and amortizations, resulting from the ownership, operation (including cost of fuel), and maintenance of the Project and repairs, renewals, replacements, and additions to the Project, including, but not limited to, the amounts which Supply System is required under the Bond Resolution to pay in each Contract Year into the various funds provided for in the Bond Resolution for debt service and all other purposes and shall include the source of funds proposed to be used; provided, however, that the Annual Budget for any portion of a Contract Year prior to the Date of Commercial Operation or September 1, 1981, whichever occurs first, shall include only such amounts as may be agreed upon by Supply System and the Administrator.

All taxes imposed and required by law to be paid with respect to Supply System's Ownership Share, and which are due and payable in a Contract Year, shall be included in the Annual budget for that Contract Year as a Project cost. To the extent Supply System is permitted by law to negotiate for payments in lieu of taxes or other negotiated payments to state or local taxing entities, the Annual Budget shall also include the amounts of such negotiated payments; provided, however, that Supply System shall not agree to such negotiated payment if in any Contract Year the sum of such negotiated payments and taxes imposed by law would exceed the total amount of ad valorem taxes that Supply System would have paid in that year to such taxing entities if Supply System's Ownership Share of the Project or portion thereof, within the boundaries of each such taxing entity, were subject to ad valorem taxes and its valuation for tax purposes were added to the valuation of the property subject to ad valorem taxes by such taxing entity but with its millage rate reduced so that the amount of ad valorem taxes raised would be unchanged.

(b) "Billing Statement" means the written statement prepared by Supply System that shows the amount to be paid to Supply System by the Participant for the Participant's Share for a Contract Year or, in the case of an amended Billing Statement, for the remainder of such Contract Year. Such amount shall be determined as to the Participant by multiplying the amount of the Annual Budget or the amended Annual Budget, as the case may be, less any other funds (including but not limited to amounts payable under the Power Sales Agreements) which shall be specified in the Annual Budget as being payable from sources other than the payments to be made under the Net Billing Agreements, by the Participant's Share. At the end of each Contract Year any amount over or under billed during such year will be reflected in the Billing Statement for the following Contract Year.

(c) "Bonds" means any bond, bonds or other evidences of indebtedness issued in connection with the Project pursuant to the Bond Resolution (1) to finance or refinance Supply System's Ownership Share of the costs associated with planning, designing, financing, acquiring and constructing the Project pursuant to the Bond Resolution and (2) for any other purpose authorized thereby.

(d) "Bond Resolution" means the resolution or resolutions adopted or supplemented by Supply System, as the same may be amended or supplemented, to authorize the Bonds.

(e) "Companies" means the electric utilities or other entities, other than Supply System, that execute and are party to a Power Sales Agreement.

(f) "Contract Year" (1) means the period commencing on the Date of Commercial Operation, or on January 1, 1981, whichever occurs first, and ending at 12 p.m.

on the following June 30, and (2) thereafter means the 12 month period commencing each year at 12 p.m. on June 30, except that the last Contract Year shall end on the date of termination of this agreement.

(g) "Date of Commercial Operation" means the date fixed pursuant to section 1(g) of the Project Agreement.

(h) "Net Billing Agreements" means this agreement and all other agreements for the Project similar to this agreement entered into by Supply System, the Administrator and each of the Participants (Contracts No. 14-03-39101 through 14-03-39203, inclusive).

(i) "Ownership Agreement" means the Agreement for construction, ownership, and operation of the Project, as the same may be amended, and as executed by the Project Owners.

(j) "Participants" means those entities which are specified in Exhibit A or which become assignees of all or part of any Participant's Share pursuant to sections 7(b) or 15.

(k) "Participant's Share" means the decimal fraction share of Supply System's Ownership Share of Project Capability, reduced by short-term sales of output from Supply System's Ownership Share of the Project under the Power Sales Agreements, purchased by the Participant hereunder as specified in Exhibit A, plus, during any period in which a decimal fraction is assigned to the Participant pursuant to sections 7(f) or 12 hereof or pursuant to section 7(b) in the other Net Billing Agreements the decimal fraction share or shares so assigned, and minus any reductions under section 12 hereof or under the assignment by the Participant under section 7(b) hereof during any period in which such reductions or assignments are in effect; provided, however, that such short-term sales from the Supply System's Ownership Share shall not exceed a total of

1,000 megawatt-years and shall not extend beyond June 30, 1984.

(l) "Power Sales Agreements" means the agreements for the short-term sale and purchase of output from Supply System's Ownership Share of the Project entered into simultaneously with this agreement by Supply System and each of the Companies.

(m) "Project" means the nuclear generating plant and related property as described in Exhibit B. Exhibit B may be revised from time to time by mutual agreement of Supply System and the Administrator, after consultation with the Participant, but in any event shall conform to the description of the Project in the Bond Resolution which authorizes the issuance of Bonds in an amount sufficient to pay the costs of acquiring and constructing Supply System's Ownership Share of the Project.

(n) "Project Agreement" means the agreement for the financing, construction and operation of Supply System's Ownership Share as the same may be amended, executed by Supply System and the Administrator (Contract No. 14-03-39100).

(o) "Project Capability" means the actual electrical generating capability, if any, of the Project at any particular time (including times when the Project is not operable or operating or the operation thereof is suspended, interrupted, interfered with, reduced or curtailed, in each case in whole or in part), less Project station use and losses.

(p) "Project Consultant" means an individual or firm, of national reputatio having demonstrated expertise in the field of the matter or item referred to it, appointed among other things, for the resolution of a difference regarding a matter or item referred by Supply System. A different Project Consultant may be appointed for each matter or item referred.

(q) "Project Owners" means Supply System and the electric utilities that execute and are party to the Ownership Agreement.

(r) "Prudent Utility Practice" at a particular time means any of the practices, methods and acts, which in the exercise of reasonable judgment in light of the facts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto) known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Utility Practice shall apply not only to functional parts of the Project but also to appropriate structures, landscaping, painting, signs, lighting, other facilities and public relations programs reasonably designed to promote public enjoyment, understanding and acceptance of the Project. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts. In evaluating whether any matter conforms to Prudent Utility Practice, the parties and any Project Consultant shall take into account (1) the fact that Supply System is a municipal corporation and operating agency under the laws of the State of Washington with the statutory duties and responsibilities thereof and (2) the objective to integrate the entire Project Capability with the generating resources of the Federal Columbia River Power System, the Project Owners (except Supply System) and the Companies, to achieve optimum utilization of the resources of such systems taken as a whole, and to achieve efficient and economical operation of such systems. Any practice, method or act which pursuant to the Ownership Agreement is determined to be Prudent Utility Practice shall be deemed to be Prudent Utility Practice hereunder.

(s) "Supply System's Ownership Share" means [illegible].70 or such other decimal fraction as may be determined under the Ownership Agreement.

2. Exhibits. Exhibits A through C are by this reference incorporated herein and made a part of this agreement. Supply System and the Participant shall each be the "Contractor" as that term is used in Exhibit C.

3. Term of Agreement. This agreement shall be effective upon execution and delivery and, except as provided in section 10(c) and except as to accrued obligations and liabilities, shall terminate on the date of written notice by Supply System pursuant to section 10(a).

4. Financing, Design, Construction, Operation and Maintenance of the Project. Supply System shall perform its duties and exercise its rights under the Ownership Agreement in accordance with Prudent Utility Practice, and shall, in good faith and in accordance with Prudent Utility Practice, use its best efforts to construct, operate and maintain the Project and to finance its interest therein.

5. Sale, Purchase and Assignment of Participant's Share.

(a) Sale of Participant's Share. Supply System hereby sells, and the Participant hereby purchases, the Participant's Share. The purchase price to be paid for each Contract Year by the Participant to Supply System for the Participant's Share shall be the amount specified in the Billing Statement. The Participant shall make the payments to be made to Supply System under sections 5, 6 and 10, whether or not the Project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the Project output, and such payments shall not be subject to any reduction whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance by Supply System or any other Project Owner or the Administrator or any other Participant under this or any other agreement or instrument.

(b) Assignment of Participant's Share to the Administrator. The Participant hereby assigns, and the Administrator hereby accepts the assignment of, the Participant's Share. In consideration of such assignment, the Administrator shall provide to the Participant the payments, offsets and credits specified in sections 7 and 10 in the manner provided therein, whether or not the Project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the Project output. Such payments, offsets or credits to be made by the Administrator under this agreement shall not be reduced by offset or otherwise, except as specifically provided in section 7, and shall not be conditioned upon the performance or nonperformance by Supply System, or any other Project Owner, the Participant or any Participant under this or any other agreement or instrument.

6. Payment by the Participant.

(a) Not less than 45 days prior to each Contract Year, or whenever the Annual Budget for such Contract Year is amended, Supply System shall prepare and deliver to the Participant and the Administrator a Billing Statement showing the amount to be paid by the Participant for such Contract Year.

Whenever during a Contract Year the Participant's Share changes from that used in preparing the Billing Statement for that Contract Year, an amended Billing Statement shall be prepared for the remainder of that Contract Year reflecting such change and shall be submitted to the Participant and the Administrator.

(b) The Participant shall pay to Supply System each Contract Year the amount specified in the Billing Statement submitted under subsection (a) above. Such payments shall be made as specified below.

The Participant shall pay to Supply System each month in a Contract Year the amount by which the net billing credits and cash payments theretofore received from the Administrator by the Participant for that Contract Year under section 7 exceed the sum of the Participant's previous payments to Supply System for that Contract Year until the amount of the Billing Statement has been paid; provided, however, that in any event the Participant shall pay by the end of the last month in that Contract Year the amount by which the amount in the Billing Statement exceeds the total of the monthly amounts previously paid to Supply System by the Participant in such Contract Year.

Each such payment shall be made on or before the thirtieth day after (1) the date on each of the Administrator's bills to the Participant which reflects a credit to the Participant for such Contract Year pursuant to section 7(a) or (2) the date that payment is received from the Administrator pursuant to section 7(c). Amounts due and not paid by the Participant on or before the close of business of such thirtieth day shall bear an additional charge of two percent of the unpaid amount. Thereafter, a further charge of one-half percent of the initial amount remaining unpaid shall be added on the last day of each succeeding 30 day period until the amount due is paid in full. Remittances received by mail will be accepted without assessment of the delayed payment charges referred to above provided the postmark indicates the payment was mailed on or before the thirtieth day after the date of the bill. If the thirtieth day after the date of the bill is a Sunday or other nonbusiness day of the Participant, the next following business day shall be the last day on which payment may be mailed without addition of the delayed payment charge.

(c) In the event that Supply System bears any cost under section 8(e) of the Project Agreement the Participant will pay to Supply System an amount equal to the amount of such cost multiplied by the Participant's Share, in addition to the payments specified in section 6(b) hereof. Payments under this section 6(c) hereof shall be made within 30 days from the date of mailing of the statement stating the amount of the payments.

7. Payment by the Administrator.

(a) For each Contract Year, the Administrator shall pay to the Participant an amount equal to that set forth in the Billing Statement for that Contract Year. The Administrator's payments shall be effected by means of credits against the Administrator's monthly billings to the Participant under the Participant's Bonneville Contracts, as follows:

(1) For Contract Years in which this is the only agreement requiring the Administrator to make payments to the Participant: In the month preceding each such Contract Year the Administrator shall allow a billing credit in the form of an offset to the Participant in the full amount of the Administrator's billings in that month under the Participant's Bonneville Contracts. A billing credit computed in the same manner shall be allowed in each of the succeeding months (except the last) in that Contract Year until the full amount owed by the Administrator for that Contract Year has been offset against the Administrator's billings to the Participant.

(2) For Contract Years in which there are two or more agreements requiring the Administrator to make payments to the Participant: In the month preceding each such Contract Year and in each of the succeeding months (except the last) in that Contract Year the Participant's billing credits under this agreement shall be offset in the manner specified in (1) above against the payments due from the Administrator under all agreements of the Participant requiring the Administrator to make payments

to the Participant, in the proportion that the amount specified in the Billing Statement bears to the sum of the amounts to be paid by the Administrator under all such agreements for that Contract Year.

The total offsets allowed to the Participant hereunder for a Contract Year shall not exceed the sum of (1) the amount specified in the Billing Statement for that year and (2) any amount paid by the Participant for a prior Contract Year which remains unpaid by the Administrator to the Participant under this agreement.

"Participant's Bonneville Contracts" as used in this section means all contracts or agreements between the Participant and the Administrator which require payments by the Participant to the Administrator for sale and exchange of electric power and energy, operation and maintenance of facilities, use of transmission facilities, and emergency and standby power.

(b) If for any Contract Year, the Administrator determines that the dollar obligations due the Administrator from the Participant, referred to in subsection (a) above, are or are expected to be insufficient to offset the Administrator's dollar obligations to such Participant under subsection (a) above, and, in the opinion of the Administrator and the Participant, are expected to remain insufficient for a significant period, the Administrator shall use his best efforts to arrange for assignment of all or a portion of the Participant's Share and the associated benefits and obligations (subject to the prior assignment of the Participant's Share to the Administrator hereunder) to another customer or customers of the Administrator for all or a portion of the remaining term of this agreement to the extent required to eliminate the insufficiency, and the Participant shall make the assignment so arranged. The other Participants shall have first right to accept such assignment, pro rata among those exercising such right, before an assignment is made to a customer who is not one of the Participants. If the Administrator is unable to arrange for such assignment, the Participant shall make such assignment to the other Participants pro rata pursuant to the counterparts of subsection (f) of this section in the other Net Billing Agreements.

(c) If (1) assignments under subsection (b) above cannot be made in amounts sufficient to bring into balance the respective dollar obligations of the Administrator and (2) an accumulated balance in favor of the Participant from a previous Contract Year is expected by the Administrator to be carried for an additional Contract Year, such balance and any subsequent monthly net balances that cannot be net billed shall be paid in cash to the Participant by the Administrator, subject to the availability of appropriations for such purposes.

(d) The Administrator and the Participant shall not enter into any agreements providing for payments to the Participant which the Administrator estimates will cause the aggregate of his billings to the Participant to be less than 115 percent of the Administrator's net billing obligations to the Participant under all agreements providing for net billing.

(e) If all or a portion of the Participant's Share is assigned under this section, the Participant shall nevertheless remain liable to Supply System to pay the purchase price for the Participant's Share in accordance with section 5(a) as if such assignment had not been made, and such liability of the Participant shall be discharged only to the extent that the assignee of the portion of the Participant's Share so assigned shall pay to Supply System the purchase price for the portion of the Participant's Share so assigned in accordance with the provisions of this agreement. Supply System may commence such suits, actions or proceedings, at law or in equity, including suits for specific performance, as may be necessary or appropriate to enforce the obligations of the Participant with respect to such liability.

(f) If assignments pursuant to section 7(b) of the other Net Billing Agreements cannot be made in amounts sufficient to balance dollar obligations of the Administrator and any other Participant, the Participant shall accept on a pro rata basis with other Participants assignment of a portion of such other Participant's Share, to the extent required to eliminate such insufficiency; provided, however, that the sum of such assignments to the Participant under this subsection shall not without the consent of the Participant exceed an accumulated maximum of 25 percent of the Participant's Share specified in Exhibit A, nor shall any such assignment under this subsection cause the estimate of the payments to be made by the Participant to Supply System under this agreement to exceed the estimate of the Administrator's billings to the Participant for each Contract Year during the period of such assignment, both such estimates to be made by the Administrator.

(g) The estimates by the Administrator under this agreement of billing credits and of payments to be made by the Participant and the Administrator giving rise to such billing credits shall be conclusive.

8. Scheduling. Prior to 4 p.m. on each work day beginning on the day preceding the Date of Commercial Operation (work day meaning a day which the Administrator and Supply System observe as a regular work day) the Administrator shall notify Supply System of the amounts of energy from the Participant's Share he will require for each hour of the following day or days; provided, however, that the Administrator may during any hour request delivery of other amounts of such energy. Supply System's dispatcher, within the capability of the Participant's Share and in accordance with Prudent Utility Practice, shall schedule for delivery to the Administrator at the point of delivery specified in section 11 for each hour in the term hereof the amounts of energy so requested by the Administrator.

9. Participant's Right to Use Project Capability.

(a) If the Administrator is unable to satisfy his obligation to the Participant by net billing, assignment or cash payment under section 7, and determines, in consultation with the Participant, that this inability will continue for a significant period, the Participant may direct that all or a portion of the energy associated with the Participant's Share be delivered by Supply System for the Participant's account at the point of delivery specified in section 11, for either the expected period of such inability or the remainder of the term hereof, whichever is specified by the Participant when it elects to have such energy delivered to it. The amount of such delivery shall be limited to the amount of the Participant's Share for which payment cannot be made, at the time the Participant elects to have such delivery made to it, by net billing with the Participant or assignees or by direct payment by the Administrator hereunder. The Participant's obligations to assign its Participant's Share to the Administrator and the Administrator's obligations to acquire such share and make payments to the Participant under this agreement shall then be appropriately modified. The Administrator's prior obligations to the Participant not previously liquidated pursuant to the terms of section 7 shall be preserved until satisfied.

(b) If the Participant elects to withdraw all or a portion of its Participant's Share as provided in this section, the Administrator will transmit such share to any point(s) of delivery on the Federal Columbia River Power System designated by the Participant where the Administrator determines such share can be made available, will supply station service and losses related to such share during shutdown of the Project and will provide forced-outage reserves for such share, under the same terms and conditions as provided in contracts for similar service then being offered to other utilities in the Pacific Northwest owning interests in large thermal projects.

(c) Upon withdrawal of any portion of the Participant's Share under this section, the Participant shall schedule such portion in the same manner as provided for the Administrator in section 8, and the Administrator's rights under section 8 shall be correspondingly reduced.

Whenever the Participant schedules any portion of its Participant's Share, the Participant and the Administrator shall (1) schedule at least their respective proportionate shares of the minimum capability of the Project, as determined by Supply System, unless all Participants with similar obligations to schedule and the Project Owners and the Administrator agree to a shutdown of the Project; provided, however, that the Administrator may, at his election, and in accordance with section 11(d) of the Ownership Agreement, require shutdown of the Project if he supplies through exchange arrangements the power and energy the Participant otherwise would schedule from the Project during such period of shutdown, and (2) supply to Supply System all necessary forecasts of their generation requirements from the Project for ensuing periods as necessary to enable Supply System to prepare the fuel management plan pursuant to section 10 of the Ownership Agreement.

10. Termination Settlements.

(a) If Supply System is unable to participate in ownership, construction, or operation of the Project due to licensing, financing, construction or operating conditions which are beyond its control, or if Supply System is in default as defined in the Ownership Agreement and has been requested by the Administrator to give notice of termination, or if the Project Owners invoke the End of the Project procedure in section 22 of the Ownership Agreement, Supply System shall give notice of termination of this agreement effective on the date of such notice.

Supply System shall terminate its activities related to construction and operation of the Project, and shall undertake the salvage, discontinuance, decommissioning and disposition or sale of Supply System ownership interest in the Project, all in accordance with the Ownership Agreement. Thereafter Supply System shall provide monthly accounting statements to the Administrator and the Participant of all costs associated therewith. Such monthly accounting statements shall continue until all Bonds have been paid or funds set aside for the payment or retirement thereof in accordance with the Bond Resolution or the final disposition of the Project whichever is later, at which time a final accounting statement shall be prepared by Supply System at the earliest reasonable time. Such costs of salvage, discontinuance, decommissioning and disposition or sale shall include, but shall not be limited to, all of Supply System's accrued costs and liabilities resulting from Supply System's ownership, construction, operation (including cost of fuel) and maintenance of and renewals and replacements to the Project, all other Supply System costs resulting from its ownership of the Project and the salvage, discontinuance, decommissioning and disposition thereof, and all amounts which Supply System is required under the Bond Resolution to pay in each year into the various funds provided in the Bond Resolution for debt service and all other purposes until the date that all of the Bonds have been paid or funds set aside for the payment or retirement thereof in accordance with the Bond Resolution.

The monthly accounting statements shall credit against such costs all amounts received by Supply System from the disposition of Supply System's Ownership Share of Project assets. The final accounting statement shall credit the fair market value of any assets related to the Project then retained by Supply System. If the monthly or final accounting statements show that such costs exceed such credits, the Participant shall pay Supply System at times reasonably agreed upon the sum determined by multiplying the amounts shown to be due in such statements by the Participant's Share. In any case such payments shall be made at times and in amounts sufficient to cover on a current basis the Participant's Share of the amount which Supply System is required under the Bond Resolution to pay in each year into the various funds provided in the Bond Resolution for debt service and all other purposes. If the final accounting statement shows that such credits exceed such costs, Supply System shall pay at times reasonably agreed upon an amount determined by multiplying such excess by the Participant's Share, such amount to be divided between the Administrator and the Participant as their interests may appear. Such excess credits shall bear interest from the date of such final accounting statement to the date of payment, at the average of the annual interest rates for each month during such time for three-to-five year issues, United States Government securities (taxable), Money Market Rates, as published by the Board of Governors of the Federal Reserve System in the "Federal Reserve Bulletin" or equivalent publication or the maximum rate lawfully payable by Supply System, whichever is less.

(b) To the extent of the Participant's Share then assigned to the Administrator, the Administrator shall pay the Participant the amounts, if any, paid by the Participant to Supply System pursuant to this section. Such amounts shall be paid in the manner specified in section 7 and at such times as the parties agree upon.

(c) The provisions of this section and the provisions of sections 5(a) and 5(b) describing the circumstances under which payments are to be made in this section and the provisions of section 13 shall remain in effect notwithstanding termination of this agreement pursuant to section 3.

11. Provisions Relating to Delivery. Deliveries of electric power and energy to the Administrator shall be made at the point of delivery and at the approximate voltage described in the exhibit specified below. Such electric power and energy shall be in the form of three-phase current, alternating at a frequency of approximately 60 hertz. Amounts so delivered at such point during each month shall be determined from measurements made by Project meters, adjuste for losses, if any, as agreed upon by the parties hereto, installed to record such deliveries at the place and in the circuit agreed upon by Supply System and the Administrator. Such point of delivery shall be described in a suitable exhibit to this agreement when the location, voltage, and metering details of the point of delivery are so agreed.

12. Obligations in the Event of Default. The Participant's Share purchase by the Participant from Supply System and assigned by the Participant to the Administrator under this agreement shall be automatically increased for the remaining term of this agreement pro rata with that of other nondefaulting Participants if, and to the extent that, one or more of the Participants is unable, or fails or refuses for any reason, to perform its obligations under its Net Billing Agreement, and the Participant's Share of the defaulting Participant shall be reduced correspondingly; provided, however, that the sum of such increases for the Participant pursuant to this subsection shall not, without consent of the Participant, exceed an accumulated maximum of 25 percent of the Participant's Share specified in Exhibit A, nor shall any such increase under t subsection cause the estimate of the payments to be made by the Participant to Supply System under this agreement to exceed the estimate of the Administrator' billings to the Participant during the period of such increase, which estimates shall be made by the Administrator and shall be conclusive.

If the Participant shall fail or refuse to pay any amounts due to Supply System hereunder, the fact that the other Participants have assumed the obligation to make such payments shall not relieve the Participant of its liability for such payments, and the Participants assuming such obligation, either individually or as a member of a group, shall have a right of recovery from the Participant. Supply System or any Participant as their interests may appear, jointly or severally, may commence such suits, actions or proceedings, at law or in equity, including suits for specific performance, as may be necessary or appropriate to enforce the obligations of this agreement against the Participant under this subsection.

13. Sources of Participant's Payments. The Participant shall not be required to make the payments to Supply System under this agreement except from the revenues derived by the Participant from the ownership and operation of its electric utility properties and from payments by the Administrator under this agreement.

The Participant covenants and agrees that it will establish, maintain and collect rates or charges for power and energy and other services, facilities and commodities sold, furnished or supplied by it through any of its electric utility properties which shall be adequate to provide revenues sufficient to enable the Participant to make the payments to be made by it to Supply System under this agreement and to pay all other charges and obligations payable from or constituting a charge and lien upon such revenues.

14. Modification and Uniformity of Agreement.

(a) This agreement shall not be binding upon any of the parties hereto if it is not binding upon all of the parties hereto, but this agreement shall not be subject to termination by any party under any circumstances, whether based upon the default of any other party under this agreement, or any other instrument, or otherwise, except as specifically provided in this agreement.

(b) This agreement shall not be amended, modified, or otherwise changed by agreement of the parties in any manner that will impair or adversely affect the security afforded by the provisions of this agreement for the payment of the principal, interest, and premium, if any, on the Bonds as they respectively become payable so long as any of the Bonds are outstanding and unpaid or funds are not set aside for the payment or retirement thereof in accordance with the Bond Resolution.

(c) If any Net Billing Agreement is amended or replaced so that it contains terms and conditions different from those contained in this agreement, the Administrator shall notify the Participant and upon timely request by the Participant shall amend this agreement to include similar terms and conditions.

15. Assignment of Agreement. This agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this agreement; provided, however, that except as provided in sections 7, 9 and 12 hereof, neither this agreement nor any interest therein shall be transferred or assigned by any one of the parties hereto except with the mutual consent in writing of the other two parties hereto, to any other entity except the United States or an agency thereof. Such consent will not be unreasonably withheld. No assignment or transfer of this agreement shall relieve the parties of any obligation hereunder.

16. Approval by Rural Electrification Administrator. If the Participant is a party to an agreement or other instrument pursuant to which approval of this agreement by the Administrator of the Rural Electrification Administration

is required as listed in Exhibit A, this agreement shall not be binding upon any of the parties until it shall have been approved by him or his delegate.

17. Participants' Review Board.

(a) Composition; election. Not more than 30 days after the execution of this agreement, and thereafter not less than 60 days prior to the commencement of each Contract Year and at such other times prior to June 30, 1981, as the Participants' Review Board may determine, the Participants shall elect a Participants' Review Board consisting of nine members. Supply System shall give each Participant not less than 15 days' written notice stating the time and place at which a meeting of representatives of the Participants shall be held for the purpose of holding such election. Each Participant shall designate the person and an alternate (to serve in the absence or disability of such person), to cast its vote(s) for Board members by written notice filed with Supply System. The vote cast in behalf of each Participant shall be proportional to its Participant's Share. Any vacancy on the Board shall be filled by vote of the remaining Board members pending the next Board election.

(b) Board meetings; voting; and rules. Meetings of the Participants' Review Board shall be held at least quarterly during the construction of the Project and at least semiannually thereafter. Timely written notice of the time and place of such meeting shall be given to the parties. Each member of the Board shall be entitled to one vote, to be cast in person and not by proxy. A majority of the Board shall constitute a quorum, and the majority of those present shall be necessary and sufficient for the adoption of any motion or resolution except as otherwise provided in subsection (e) below. All meetings of the Board shall be open to attendance by any person authorized by any of the Participants. Except as herein provided, the calling and holding of meetings of the Board, and all of its other proceedings, shall be governed by rules adopted from time to time by two-thirds of the entire membership of the Board which rules may provide that the Board shall have the right to appoint persons of technical, legal, auditing or other special qualifications to committees to carry out reviews and investigations.

(c) Except in the event of an emergency requiring immediate action, copies of all proposed Construction and Annual Budgets and fuel management plans, includin amendments thereto, and plans for refinancing the Project shall be submitted by Supply System to the Participants' Review Board within a reasonable time, prior to the time such proposed budgets and plans are to be adopted by Supply System. Such copies shall be submitted to the Participant upon its request.

(d) Except in the event of an emergency requiring immediate action, all bids, bid evaluations and proposed contract awards for amounts in excess of $500,000 shall be submitted to the Participants' Review Board at least seven days prior to award.

(e) Supply System will consider the recommendations of the Participants' Review Board, giving due regard to utilizing the Project consistent with Prudent Utility Practice and the Supply System's statutory duties. Written recommendation may be made to Supply System whenever such recommendation is approved by the majority of the members of the Participants' Review Board. Such written recommendations shall be forwarded to Supply System within a reasonable time along with supporting data, which time shall not exceed the comparable time, if any, prescribed in the Project Agreement. Supply System shall take action on such recommendations within a reasonable time for adoption, modification or rejection. Supply System, upon taking action, shall notify the Participants' Review Board promptly of such action, and if it modifies or rejects a recommendation, shall give the reason therefor.

(f) If Supply System modifies or rejects a written recommendation of the Participants' Review Board concerning a matter submitted for review under subsections (c) or (d) above, the Participants' Review Board may refer the matter to the Project Consultant in the manner described in section 8 of the Project Agreement for his written decision and his decision shall be binding upon the parties. Pending any decision by the Project Consultant under this subsection, Supply System shall proceed in accordance with the Project Agreement. Nothing in this subsection shall affect the procedure for the settlement of any dispute between the Administrator and the Supply System under this agreement or the Project Agreement.

(g) Except as specifically provided in section 8(e) of the Project Agreement Supply System shall not proceed with any item as proposed by it and not concurred in by the Administrator without approval of the Participants' Review Board.

(h) Supply System shall not, without the consent of the Administrator and the Participants' Review Board, cause the insurance on the Project to be extended to any additional units or generating projects or to lapse to permit the extension of such coverage.

18. Applicability of Other Instruments. It is recognized by the parties hereto that Supply System in the ownership, construction and operation of the Project must comply with the requirements of the Bond Resolution and all licenses, permits, and regulatory approvals necessary for such ownership, construction and operation, and it is, therefore, agreed that this agreement is made, and referrals to the Project Consultant hereunder shall be, subject to the terms and provisions of the Ownership Agreement, the Bond Resolution and all such licenses, permits, and regulatory approvals.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in several counterparts.

UNITED STATES OF AMERICA
Department of the Interior

(SEAL)

By S/ DONALD PAUL HODEL
Bonneville Power Administrator

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

(SEAL)

By S/ J. J. STEIN

Title Managing Director

ATTEST:

By S/ ED FISCHER

Title Chairman
Executive Board

CITY OF SEATTLE, WASHINGTON

(SEAL)

By S/ WES UHLMAN

Title Mayor

ATTEST:

By S/ C. G. ERLANDSON

Title City Comptroller

EXHIBIT A
(WPPSS No. 3)

TABLE OF PARTICIPANTS AND PARTICIPANT'S SHARE

Participant	Reference
City of Albion, Idaho	Albion
City of Bandon, Oregon	Bandon
Public Utility District No. 1 of Benton County, Washington	Benton PUD
*Benton Rural Electric Association	Benton REA
*Big Bend Electric Cooperative, Inc	Big Bend
*Blachly-Lane County Cooperative Electric Association	Blachly-Lane
The City of Blaine, Washington	Blaine
The City of Bonners Ferry, Idaho	Bonners Ferry
City of Burley, Idaho	Burley
The City of Canby, Oregon	Canby
City of Cascade Locks, Oregon	Cascade Locks
*Central Electric Cooperative, Inc	Central Elec.
The City of Centralia, Washington	Centralia
The Central Lincoln Peoples' Utility District	Central Linc.
Public Utility District No. 1 of Chelan County, Washington	Chelan
The City of Cheney, Washington	Cheney
Public Utility District No. 1 of Clallam County, Washington	Clallam
Public Utility District No. 1 of Clark County, Washington	Clark
Clatskanie Peoples' Utility District	Clatskanie
*Clearwater Power Company	Clearwater
*Columbia Basin Electric Cooperative, Inc	Columbia Basin
*Columbia Power Cooperative Association, Inc	Columbia Power
*Columbia Rural Electric Association, Inc	Columbia Rural
Consolidated Irrigation District No. 19	Cons. Irrig.
*Consumers Power, Inc	Consumers
*Coos-Curry Electric Cooperative, Inc	Coos-Curry
City of Coulee Dam, Washington	Coulee Dam
Public Utility District No. 1 of Cowlitz County, Washington	Cowlitz
The City of Declo, Idaho	Declo
Public Utility District No. 1 of Douglas County, Washington	Douglas PUD
*Douglas Electric Cooperative, Inc	Douglas Elec.
The City of Drain, Oregon	Drain
East End Mutual Electric Co., Ltd	East End
The City of Ellensburg, Washington	Ellensburg
*Fall River Rural Electric Cooperative, Inc	Fall River
Farmers Electric Co., Ltd	Farmers
*Public Utility District No. 1 of Ferry County, Washington	Ferry
*Flathead Electric Cooperative, Inc	Flathead
The City of Forest Grove, Oregon	Forest Grove
Public Utility District No. 1 of Franklin County, Washington	Franklin

EXHIBIT A
(WPPSS No. 3)
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Participant (Cont.)	Reference
Public Utility District No. 2 of Grant County, Washington	Grant
Public Utility District No. 1 of Grays Harbor County, Washington.	Grays Harbor
*Harney Electric Cooperative, Inc.	Harney
City of Heyburn, Idaho	Heyburn
Hood River Electric Cooperative of Hood River County, Oregon	Hood River
*Idaho County Light & Power Cooperative Association, Inc.	Idaho Co.
City of Idaho Falls, Idaho	Idaho Falls
*Inland Power & Light Company	Inland
*Public Utility District No. 1 of Kittitas County, Washington	Kittitas
*Public Utility District No. 1 of Klickitat County, Washington	Klickitat
*Kootenai Electric Cooperative, Inc.	Kootenai
*Lane County Electric Cooperative, Inc.	Lane
Public Utility District No. 1 of Lewis County, Washington	Lewis
*Lincoln Electric Cooperative, Inc. (Montana)	Lincoln (M)
*Lincoln Electric Cooperative, Inc. (Washington)	Lincoln (W)
*Lost River Electric Cooperative, Inc.	Lost River
*Lower Valley Power & Light, Inc.	Lower Valley
*Public Utility District No. 1 of Mason County, Washington	Mason 1
Public Utility District No. 3 of Mason County, Washington	Mason 3
Town of McCleary, Washington	McCleary
City of McMinnville, Oregon	McMinnville
*Midstate Electric Cooperative, Inc.	Midstate
City of Milton-Freewater, Oregon	Milton-F.
City of Minidoka, Idaho	Minidoka
*Missoula Electric Cooperative, Inc.	Missoula
City of Monmouth, Oregon	Monmouth
*Nespelem Valley Electric Cooperative, Inc.	Nespelem
*Northern Lights, Inc.	Northern Lts.
Northern Wasco County People's Utility District	Northern Wasco
*Okanogan County Electric Cooperative, Inc.	Okanogan Elec.
Public Utility District No. 1 of Okanogan County, Washington	Okanogan PUD
*Orcas Power and Light Company	Orcas
Public Utility District No. 2 of Pacific County, Washington	Pacific
Public Utility District No. 1 of Pend Oreille County, Washington.	Pend Oreille
City of Port Angeles, Washington	Port Angeles
*Prairie Power Cooperative, Inc.	Prairie
*Raft River Rural Electric Cooperative, Inc.	Raft River
*Ravalli County Electric Cooperative, Inc.	Ravalli
City of Richland, Washington	Richland
Riverside Electric Company, Ltd.	Riverside

Participant (Cont.)	Reference
City of Rupert, Idaho	Rupert
Rural Electric Company	Rural
Salem Electric	Salem
*Salmon River Electric Cooperative, Inc	Salmon
City of Seattle, Washington	Seattle
Public Utility District No. 1 of Skamania County, Washington	Skamania
Public Utility District No. 1 of Snohomish County, Washington	Snohomish
South Side Electric Lines, Inc	South Side
The City of Springfield, Oregon	Springfield
The Town of Sumas, Washington	Sumas
*Surprise Valley Electrification Corporation	Surprise V.
City of Tacoma, Washington	Tacoma
*Tanner Electric	Tanner
*Tillamook Peoples' Utility District	Tillamook
*Umatilla Electric Cooperative Association	Umatilla
Unity Light and Power Company	Unity
Vera Irrigation District No. 15	Vera
*Vigilante Electric Cooperative, Inc	Vigilante
Public Utility District No. 1 of Wahkiakum County, Washington	Wahkiakum
*Wasco Electric Cooperative, Inc	Wasco
*Wells Rural Electric Company	Wells
*West Oregon Electric Cooperative, Inc	West Oregon
Public Utility District No. 1 of Whatcom County, Washington	Whatcom

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*Approval of Agreement by Rural Electrification Administration required.

Upon prior written notice to Supply System, the Administrator and all of the other Participants, this Exhibit A may be amended from time to time upon mutual agreement of two or more Participants so as to provide revised Participants' Shares for such Participants so long as the aggregate of the increases in Participants' Shares is equal to the aggregate of the decreases in Participants' Shares; provided, however, that the sum of any such decreases for any Participant pursuant to this paragraph shall not exceed an accumulated maximum of 25 percent of the Participant's Share specified in this Exhibit on the date of execution of this agreement nor shall any such increase under this paragraph cause the estimate of the payments to be made by a Participant to Supply System under this agreement to exceed 86.95 percent of the estimate of the Administrator's billings to such Participant during the period of such increase, which estimates shall be made by the Administrator and shall be conclusive; provided, further, that any such increase or decrease shall not affect or impair the tax exempt status of the Bonds. The Administrator shall then prepare a revised Exhibit A which shall be substituted for this Exhibit A and become a part of this agreement.

Exhibit A (WPPSS No. 3)
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PARTICIPANT'S SHARE

Participant	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87 1/
Albion	0.00004	0.00004	0.00006	0.00006	0.00005	0.00004	0.00003
Bandon	0.00094	0.00094	0.00132	0.00140	0.00143	0.00147	0.00144
Benton PUD	0.03604	0.03604	0.04160	0.04308	0.04174	0.04158	0.04295
Benton REA	0.00673	0.00748	0.00783	0.00741	0.00699	0.00673	0.00645
Big Bend	0.00074	0.00074	0.00528	0.00507	0.00484	0.00332	0.00374
Blachly-Lane	0.00388	0.00388	0.00415	0.00436	0.00452	0.00470	0.00491
Blaine	0.00092	0.00092	0.00116	0.00107	0.00103	0.00102	0.0010.
Bonners Ferry	0.00084	0.00084	0.00108	0.00109	0.00105	0.00104	0.00099
Burley	0.00081	0.00081	0.00198	0.00198	0.00188	0.00121	0.00155
Canby	0.00139	C.00139	0.00164	0.00193	0.00211	0.00231	0.00256
Cascade Locks	0.00042	0.00042	0.00049	0.00054	0.00058	0.00061	0.00064
Central Elec.	0.01009	0.01243	0.01183	0.01157	0.01079	0.01010	0.00966
Centralia	0.00148	0.00148	0.00275	0.00284	0.00278	0.00246	0.00258
Central Linc.	0.02763	0.02763	0.03236	0.03432	0.03476	0.03569	0.03607
Chelan	0.00747	0.00478	0.00606	0.00562	0.00496	0.00451	0.00433
Cheney	0.00431	0.00431	0.00479	0.00481	0.00460	0.00451	0.00442
Clallam	0.00738	0.00738	0.01006	0.01040	0.01020	0.01025	0.01001
Clark	0.13903	0.13764	0.15228	0.14715	0.14467	0.14576	0.13633
Clatskanie	0.00492	0.00492	0.00763	0.00731	0.00670	0.00628	0.00530
Clearwater	0.00584	0.00604	0.00703	0.00667	0.00631	0.00609	0.00573
Columbia Basin	0.00217	0.00217	0.00382	0.00377	0.00368	0.00366	0.00338
Columbia Power	0.00078	0.00078	0.00101	0.00098	0.00096	0.00095	0.00088
Columbia Rural	0.01058	0.01330	0.01323	0.01301	0.01272	0.01271	0.01298
Cons. Irrig.	0.00008	0.00008	0.00007	0.00006	0.00005	0.00005	0.00005
Consumers	0.01538	0.01751	0.01655	0.01794	0.01923	0.02049	0.02242
Coos-Curry	0.00481	0.00481	0.00880	0.00869	0.00852	0.00844	0.00781
Coulee Dam	0.00032	0.00032	0.00052	0.00052	0.00049	0.00040	0.00041
Cowlitz	0.03296	0.04227	0.02370	0.01984	0.03146	0.02896	0.03461
Declo	0.00013	0.00013	0.00017	0.00019	0.00020	0.00021	0.00023
Douglas PUD	0.00123	0.00097	0.00085	0.00070	0.00057	0.00057	0.00049
Douglas Elec.	0.00574	0.00638	0.00617	0.00634	0.00654	0.00673	0.00692
Drain	0.00051	0.00051	0.00085	0.00089	0.00088	0.00082	0.00083
East End	0.00028	0.00028	0.00032	0.00029	0.00027	0.00026	0.00023
Ellensburg	0.00584	0.00584	0.00712	0.00723	0.00699	0.00693	0.00675
Fall River	0.00095	0.00099	0.00250	0.00288	0.00321	0.00359	0.00393

1/ Participant's Shares will remain the same as 1986-87 for remaining Contract Years in the term hereof.

Exhibit A (WPPSS No. 3)
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Participant	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87 1/
Farmers	0.00014	0.00014	0.00021	0.00019	0.00016	0.00011	0.00011
Ferry	0.00100	0.00100	0.00116	0.00112	0.00104	0.00099	0.00091
Flathead	0.00291	0.00327	0.00355	0.00327	0.00300	0.00282	0.00257
Forest Grove	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00091
Franklin	0.00898	0.00898	0.01251	0.01270	0.01225	0.01212	0.01151
Grant	0.00725	0.00464	0.00589	0.00545	0.00482	0.00428	0.00420
Grays Harbor	0.03090	0.03090	0.02040	0.02209	0.02251	0.02333	0.0238
Harney	0.00055	0.00055	0.00263	0.00261	0.00256	0.00210	0.00221
Heyburn	0.00090	0.00090	0.00173	0.00174	0.00166	0.00131	0.00145
Hood River	0.00340	0.00340	0.00436	0.00448	0.00457	0.00469	0.00469
Idaho Co.	0.00067	0.00067	0.00111	0.00109	0.00106	0.00105	0.00098
Idaho Falls	0.00363	0.00363	0.00797	0.00836	0.00831	0.00722	0.00787
Inland	0.01735	0.02076	0.02029	0.01946	0.01857	0.01811	0.01798
Kittitas	0.00180	0.00180	0.00205	0.00210	0.00205	0.00205	0.00206
Klickitat	0.00442	0.00442	0.00565	0.00534	0.00503	0.00486	0.00448
Kootenai	0.00436	0.00502	0.00515	0.00492	0.00468	0.00454	0.00443
Lane	0.00832	0.00832	0.01114	0.01125	0.01133	0.01150	0.01123
Lewis	0.00944	0.00944	0.01249	0.01253	0.01197	0.01173	0.01103
Lincoln (M)	0.00187	0.00192	0.00225	0.00214	0.00202	0.00194	0.00182
Lincoln (W)	0.00143	0.00143	0.00119	0.00116	0.00113	0.00112	0.00117
Lost River	0.00069	0.00069	0.00120	0.00121	0.00121	0.00122	0.00118
Lower Valley	0.00540	0.00542	0.00671	0.00642	0.00611	0.00594	0.00557
Mason 1	0.00144	0.00144	0.00171	0.00173	0.00167	0.00165	0.00161
Mason 3	0.01326	0.01326	0.01419	0.01411	0.01336	0.01299	0.01265
McCleary	0.00036	0.00036	0.00075	0.00074	0.00070	0.00050	0.00059
McMinnville	0.00000	0.00394	0.00102	0.00276	0.00469	0.00343	0.00547
Midstate	0.00475	0.00524	0.00590	0.00620	0.00648	0.00678	0.00704
Milton F.	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00002
Minidoka	0.00001	0.00001	0.00001	0.00001	0.00001	0.00001	0.00001
Missoula	0.00346	0.00411	0.00412	0.00392	0.00372	0.00360	0.00352
Monmouth	0.00292	0.00292	0.00352	0.00423	0.00473	0.00525	0.00588
Nespelem	0.00120	0.00129	0.00146	0.00140	0.00133	0.00129	0.00123
Northern Lts.	0.00446	0.00512	0.00547	0.00530	0.00509	0.00499	0.00489
Northern Wasco	0.00147	0.00147	0.00142	0.00165	0.00182	0.00197	0.00213
Okanogan Elec.	0.00033	0.00033	0.00092	0.00086	0.00085	0.00081	0.00079

1/ Participant's Shares will remain the same as 1986-87 for remaining Contract Years in the term hereof.

Participant	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87 1/
Okanogan PUD	0.00253	0.00253	0.00299	0.00272	0.00266	0.00066	0.00143
Orcas	0.00537	0.00604	0.00728	0.00728	0.00722	0.00730	0.00733
Pacific	0.00746	0.00746	0.00941	0.00952	0.00916	0.00905	0.00870
Pend Oreille	0.00078	0.00051	0.00064	0.00060	0.00053	0.00049	0.00047
Port Angeles	0.00366	0.00366	0.00754	0.00746	0.00702	0.00481	0.00576
Prairie	0.00024	0.00029	0.00026	0.00023	0.00020	0.00018	0.00016
Raft River	0.00341	0.00341	0.00533	0.00522	0.00507	0.00501	0.00468
Ravalli	0.00377	0.00455	0.00455	0.00438	0.00420	0.00412	0.00409
Richland	0.01006	0.01006	0.01479	0.01559	0.01556	0.01589	0.01576
Riverside	0.00025	0.00027	0.00025	0.00022	0.00019	0.00017	0.00015
Rupert	0.00062	0.00062	0.00121	0.00123	0.00119	0.00098	0.00106
Rural	0.00355	0.00442	0.00443	0.00436	0.00427	0.00426	0.00435
Salem	0.00988	0.00988	0.01025	0.01119	0.01200	0.01280	0.01385
Salmon	0.00063	0.00063	0.00104	0.00104	0.00102	0.00102	0.00097
Seattle	0.12094	0.11740	0.09930	0.08236	0.08079	0.07475	0.07206
Skamania	0.00207	0.00207	0.00291	0.00298	0.00290	0.00289	0.00278
Snohomish	0.22212	0.24072	0.19767	0.20948	0.19085	0.19308	0.19334
South Side	0.00074	0.00081	0.00085	0.00080	0.00074	0.00071	0.00067
Springfield	0.00040	0.00040	0.00145	0.00180	0.00202	0.00224	0.00238
Sumas	0.00010	0.00010	0.00019	0.00019	0.00019	0.00019	0.00018
Surprise V.	0.00097	0.00097	0.00163	0.00148	0.00135	0.00108	0.00102
Tacoma	0.06858	0.03044	0.02309	0.02792	0.04456	0.05865	0.05803
Tanner	0.00078	0.00084	0.00109	0.00108	0.00106	0.00106	0.00104
Tillamook	0.00464	0.00464	0.00746	0.00804	0.00827	0.00857	0.00833
Umatilla	0.01473	0.01467	0.01487	0.01651	0.01794	0.01910	0.02107
Unity	0.00239	0.00275	0.00278	0.00264	0.00250	0.00242	0.00235
Vera	0.00259	0.00259	0.00378	0.00398	0.00397	0.00405	0.00401
Vigilante	0.00066	0.00066	0.00136	0.00126	0.00115	0.00090	0.00088
Wahkiakum	0.00156	0.00156	0.00203	0.00208	0.00203	0.00203	0.00198
Wasco	0.00225	0.00225	0.00271	0.00265	0.00260	0.00258	0.00244
Wells	0.00262	0.00245	0.00270	0.00248	0.00228	0.00214	0.00214
West Oregon	0.00229	0.00229	0.00238	0.00241	0.00246	0.00250	0.00252
Whatcom	0.00563	0.00482	0.00459	0.00427	0.00380	0.00347	0.00335

1/ Participant's Shares will remain the same as 1986-87 for remaining Contract Years in the term hereof.

EXHIBIT B

PROJECT CHARACTERISTICS

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

NUCLEAR PROJECT NO. 3

The Washington Public Power Supply System's Nuclear Project No. 3 is expected to have a net electrical plant capability of approximately 1,100 MW.

It will be located on a site in the State of Washington acceptable to the Project Owners and the Administrator.

The plant and associated facilities will include a nuclear steam supply system, fuel and reactor coolant system with all related containment structures, safety features, instrumentation, control and auxiliary systems; turbine-generator, condensers and circulating water cooling systems, facilities and piping; electrical and mechanical systems and other related equipment and facilities; electrical facilities required to deliver the output of the Project to the BPA transmission system at a point to be determined by the Supply System and the Administrator; and other structures, shops, warehouses, construction facilities, offices, equipment or facilities required in the construction, maintenance and operation of the Project.

A complete description of the Project will be prepared after bids have been received and evaluated and awards have been made for major plant components.

[illegible]

(12-3-69)

PROVISIONS REQUIRED BY STATUTE OR EXECUTIVE ORDER

1. Contract Work Hours and Safety Standards.

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (Public Law 87-581, 76 Stat. 357-360, as amended) and is not covered by the Walsh-Healey Public Contracts Act (41 U. S. C. 35-45), is subject to the following provisions and to all other provisions and exceptions of said Contract Work Hours and Safety Standards Act.

(a) No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work, to work in excess of eight hours in any calendar day or in excess of forty hours in any workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) In the event of any violation of the provisions of subsection (a), the Contractor and any subcontractor responsible for such violation shall be liable to any affected employee for his unpaid wages. In addition, such Contractor or subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the provisions of subsection (a), in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of forty hours in a workweek without payment of the required overtime wages.

(c) The Administrator may withhold, or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor, the full amount of wages required by this contract and such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in subsection (b).

(d) No contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation based on proceedings pursuant to section 553 of title 5, United States Code, provided that such proceedings include a hearing of the nature authorized by said section.

(e) The Contractor shall require the foregoing subsections (a), (b), (c), (d) and this subsection (e) to be inserted in all subcontracts.

(f) The Contractor shall keep and maintain for a period of three (3) years from the completion of this contract the information required by 29 CFR § 516.2(a). Such material shall be made available for inspection by authorized representatives of the Government, upon their request, at reasonable times during the normal work day.

2. Convict Labor. The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

3. Equal Opportunity. Unless exempted pursuant to the provisions of Executive Order 11246 of September 24, 1965 and the rules, regulations and relevant orders of the Secretary of Labor thereunder, during the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Administrator setting forth the provisions of this equal opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Administrator, advising the labor union or worker's representative of the Contractor's commitments under this equal opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Administrator and the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Contractor's noncompliance with the equal opportunity clause of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Administrator may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Administrator, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. Interest of Member of Congress. No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to such contract if made with a corporation for its general benefit.

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GY AND MINERALS
DIVISION

July 2, 1982

B-208084

The Honorable Jim Weaver
House of Representatives

Dear Congressman Weaver:

Subject: Financial Community's Perceived Impacts Which Could Result From Default or Successful Legal Challenge by Participants in Washington Public Power Supply System Nuclear Project Nos. 4 and 5 (GAO/EMD-82-106)

Your May 3, 1982, letter requested that we review the impacts and consequences of a default or successful legal challenge by Pacific Northwest utilities participating in the construction of Washington Public Power Supply System (Supply System) 1/ Nuclear Project Nos. 4 and 5. In the request, you asked us to include the effects such actions would have on the region's ability to raise capital for public works and other programs, and to carry out the mandate of the Pacific Northwest Electric Power Planning and Conservation Act 2/ (Regional Power Act) (P.L. 96-501) enacted December 5, 1980.

Specifically, you requested that we examine the following three scenarios which would relieve participants of their financial responsibilities with respect to the Supply System Nuclear

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1/The Supply System is a municipal corporation and a joint operating agency of the State of Washington, created in 1957. It consists of 19 operating public utility districts and the cities of Ellensburg, Richland, Seattle, and Tacoma, all located in the State of Washington. The Supply System has the authority, among other things, to acquire, construct, and operate plants and facilities for the generation and transmission of electric power and energy.

2/This Act directs the Bonneville Power Administration to give priority to cost-effective conservation and renewable resources in meeting the region's power needs.

(005282)

Project Nos. 4 and 5 bonds. First, one or more utilities participating in the projects voluntarily defaulting on their obligations and throwing that class into default.[1] Second, one or more of the participants being forced into bankruptcy by the debt service obligations and creating a default among the class of participants.[2] Third, all participants being relieved of their obligations because of a successful court action by rate payers or utilities challenging the "take or pay"[3] contracts or Supply System construction practices.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to gather the views and opinions from financial experts on the possible financial impacts and consequences that a Supply System bond default or successful legal challenge could have on the region's future ability to raise capital. Because of the uncertainties of predicting what could happen, we used as a framework the above three scenarios. Our work was performed in accordance with GAO's current, "Standards for Audit of Governmental Agencies, Activities, and Functions."

In performing our work, we used various documents to develop the chronology of events leading up to the current financial problems with the Supply System's Nuclear Project Nos. 4 and 5. These documents included the bond prospectuses, Participants' Agreement, bond resolution on project Nos. 4 and 5, past GAO reports, engineering and financial reports, and the Regional Power Act.

In addressing the question of how a default or a successful challenge to the "take or pay" contract might impact the Pacific orthwest's ability to raise capital for public works and other programs, and to carry out the mandate of the Regional Power Act, we interviewed those financial experts either directly involved with or otherwise considered to be knowledgeable with the Supply System's financial situation. These officials included three financial analysts, five investment bankers, one bond counselor, and two bond rating officers in New York City, and three bond trustees located in New York City, Chicago, and Seattle. We are presenting the consensus obtained from the financial experts even though, in some instances, individual views differed.

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[1] Participants are divided into municipal and non-municipal classes. Each participant has executed an agreement with the Supply System to pay for a share of the project capability. The agreement provides that if a participant fails to make its payments, other participants in the class will have their payments automatically increased to cover the non-paying participant's share. The increase would be in the same proportion as their original share, but cannot exceed 25 percent of their share.

[2] Ibid.

[3] For the purposes of this report, the "take or pay" contract refers to a provision in the Participants Agreements which obligates each participant to make required payments to the Supply System whether or not the Projects are completed, operable or operating.

POWER DEVELOPMENT IN THE NORTHWEST

From the late 1930s to 1966, nearly all electric energy needs of the Pacific Northwest were provided by hydroelectric projects. By 1966, projected electricity demand had grown beyond the capability of the hydroelectric system. Consequently, the Bonneville Power Administration (BPA) 1/ and the region's public and private utilities formed the Joint Power Planning Council to study the region's future power needs. In 1969, the Council adopted a plan calling for the construction of several large thermal plants. As a result, the Supply System subsequently agreed to construct Nuclear Project Nos. 1, 2, and 3, which were funded by the net-billing arrangement. 2/

Due to rising construction costs for plants 1, 2, and 3, BPA could not enter net-billing for additional plants. In addition, a 1972 change in U.S. Treasury regulations denied tax exempt status to bonds sold by publicly owned utilities to finance plants if power from the facilities was sold to BPA. This resulted in the Supply System deciding to build two additional nuclear projects, (Nos. 4 and 5) which would be financially backed by participating utilities.

By July 1976, 88 BPA preference customers 3/ and one private utility became participants in acquiring the generating capability

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1/BPA was established in 1937 and is an agency of the U.S. Department of Energy. BPA markets power from 30 Federal hydroelectric projects located in the Pacific Northwest.

2/Net-billing is a financial arrangement whereby BPA agrees to purchase part or all of the generating capability of a plant.

3/Bonneville Project Act of 1937 directed that cooperatives and publicly owned utilities of the Pacific Northwest region be given first call on available Federal power resources. They consequently came to be called "preference customers."

m the Supply System Nuclear Project Nos. 4 and 5 (see appendix or listing of participants and shares owned in plants). These plants were financed through the issuance of municipal tax-exempt bonds by the Supply System and are to be retired from a Bond Fund.

TERMINATION OF NUCLEAR PROJECT NOS. 4 AND 5

After July 1976, a series of events occurred which resulted in a January 22, 1982, decision to terminate project Nos. 4 and 5. The Supply System's termination decision was based primarily on advice from the financial community that the financial markets' ability to absorb bond financing for all five projects was not possible. At the time of the termination decision, the Supply System estimated the cost of completing the two projects at approximately $12 billion, which was about $8.5 billion greater than the original estimate.

By the time the projects were terminated, the Supply System had sold $2.25 billion in bonds, secured by "take or pay" contracts, on the two projects (No. 4 was approximately 25 percent complete and No. 5 was approximately 14 percent complete). These contracts require the participants to pay off the bonds in the amount of eir proportionate share, as shown in appendix I, regardless whether the plants are ever completed or operated. By the time the $2.25 billion in bonds are retired in the year 2018, the participants will have paid $7.2 billion in principal and interest.

Because of the rate increases that will be required to pay off this debt, a number of participants and rate payers have filed lawsuits contesting the validity of "take or pay" and the Supply System's construction practices. In addition, some participants have raised the possibility of defaulting on their debt. Default could occur either through voluntary means, such as participants refusing to pay their debt and/or rate payers refusing to pay their electric bills, or through involuntary means, such as participants being unable to meet their debt obligations.

IMPACTS AND CONSEQUENCES OF DEFAULT

Investment bankers, bond counselors, bond rating officials, and financial analysts we interviewed generally believe that a default by the participants on the Nuclear Project Nos. 4 and 5 bonds could adversely affect the region's economy and its ability to raise capital in the bond market. Although these officials stated that the full impact of a default is difficult, if not impossible to predict, they generally agreed that a voluntary default could more negatively impact the participants and e region than if the participants were unable to pay due to bankruptcy or some other form of financial hardship. The predominant opinions of the financial community regarding the situation follow.

Most financial experts predicted that those participants that default could expect to pay higher interest rates for future bond sales. As one financial analyst stated, before the market ever decides to lend any future money to an entity involved in a default, the entity would be expected to pay more and to sign guarantees that it would meet its debt obligation. In effect, investment bankers would have to be satisfied that the entity would not try and renege again on its credit obligations. Moreover, an investment banker pointed out that the defaulting entity could be subject to these higher interest rates for a very long period of time because, as the banker stated, "the market is not very forgiving of those who default." The official cited the example of two municipalities which defaulted on their bonds during the depression. To this day, they are being penalized in the market place with higher interest rates.

Some financial officials also stated that the worst situation that could occur would be a voluntary default on the bonds. Such action could result in the participants being totally excluded from future access to the credit market.

In addition to default adversely affecting participants, financial experts stated that default could also have negative impacts on the region. The most probable impact cited was higher interest rates on future bond sales resulting in added financial expenses. Furthermore, investment bankers voiced concern that a default could impact the region's ability to access the credit market for other power projects, including conservation and renewable resources as provided in the Regional Power Act, and even nonpower projects, such as municipal airports and sewage treatment plants.

IMPACT OF SUCCESSFUL LEGAL CHALLENGE TO TAKE OR PAY CONTRACTS

Since December 1981, a number of suits have been filed which attempt to relieve participants of their debt obligations. On April 23, 1982, a group of twelve rural electric cooperatives, which are participants in project Nos. 4 and 5, filed a suit alleging that since there is in fact no power to "take" from the terminated plants, they are under no obligation to "pay". Another suit, filed on May 13, 1982, by the utility board of Springfield, Oregon contends that the Supply System breached its contract with the utility board by failing to properly administer the construction and design of project Nos. 4 and 5. The plantiff is claiming, in effect, that the Supply System did not fulfill its obligation in the contract to build the plants properly; therefore, the projects' participants are not required to meet their obligation to pay the bill. In addition, a suit was filed on December 22, 1981, by three residents of the City of Springfield, Oregon. The plantiffs claim that the city illegally signed its contracts with the Supply System and should not be required to pay its share of project Nos. 4 and 5.

In response to the "take or pay" suit, on May 18, 1982, Chemical Bank of New York, bond trustee for Nuclear Project Nos. 4 and 5 bonds, instituted a lawsuit in the Superior Court of King County, Washington. The suit seeks an early determination of the enforceability of "take or pay," and requests a declaration of rights, obligations, and other legal relations of the parties under the bond resolution and Participants' Agreements. An officer of Chemical Bank told us that the suit was brought to avoid the multiplicity of lawsuits being brought against the "take or pay" contracts by obtaining judgment as to the enforceability of the concept as soon as possible.

Although a successful challenge to the "take or pay" contract or construction practices could relieve the participants of their debt obligation, according to financial community officials it also could create difficulties for utility financing because "take or pay" is the traditional method of financing power projects. Financial experts stated that in lieu of "take or pay," no one knows what method of financing could be used. Most of the officials did say, however, that whatever the method, the cost of money will probably be higher because investors will perceive these projects as having more risks associated with them. The projects which would be most directly affected by such a decision are the "joint operating agency" 1/ public power projects. These power projects, located in 14 states, have similar contracts.

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As requested by your office, we did not obtain agency comments and unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days

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1/Joint operation agency is two or more public power supply systems formed jointly to finance the construction of power projects.

from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

J. Dexter Peach

J. Dexter Peach
Director

LIST OF PARTICIPANTS AND THEIR SHARE IN THE SUPPLY SYSTEM'S NUCLEAR PROJECTS NOS. 4 AND 5

Participant	Participant's Share
Municipal Class	
UTILITY DISTRICTS:	
PUD #1 of Benton County, Wa	.05080
Central Lincoln PUD, Ore	.02668
PUD #1 of Chelan County, Wa	.00642
PUD #1 of Clallam County, Wa	.01373
PUD #1 of Clark County, Wa	.09858
Clatskanie PUD, Ore	.00781
PUD #1 of Cowlitz County, Wa	.09132
PUD #1 of Douglas County, Wa	.00011
PUD #1 of Franklin County, Wa	.02925
PUD #2 of Grant County, Wa	.00581
PUD #1 of Grays Harbor County, Wa	.04410
PUD #1 of Klickitat County, Wa	.00982
PUD #1 of Lewis County, Wa	.02021
PUD #1 of Mason County, Wa	.00156
PUD #3 of Mason County, Wa	.00971
Northern Wasco County PUD, Ore	.00324
PUD #1 of Okanogan County, Wa	.00681
PUD #2 of Pacific County, Wa	.00848
PUD #1 of Pend Oreille County, Wa	.00402
PUD #1 of Skamania County, Wa	.00257
PUD #1 of Snohomish County, Wa	.13051
Tillamook PUD, Ore	.00781
Vera Irrigation District #15	.00257
PUD #1 of Wahkiakum County, Wa	.00123
CITIES:	
Bandon, Ore	.00067
Blaine, Wa	.00067
Bonners Ferry, Id	.00190
Burley, Id	.00190
Canby, Ore	.00525
Cascade Locks, Ore	.00067
Centralia, Wa	.00659
Drain, Ore	.00067
Ellensburg, Wa	.00625

Participant	Participant's Share
Heyburn, Id	.00257
Idaho Falls, Id	.00915
McCleary, Wa	.00123
McMinnville, Ore	.00971
Milton-Freewater, Ore	.00056
Port Angeles, Wa	.00469
Richland, Wa	.01965
Rupert, Id	.00324
Springfield, Ore	.01764
Steilacoom, Wa	.00145
Sumas, Wa	.00022
Tacoma, Wa	.10696
Non-municipal Class	
COOPERATIVES:	
Adler Mutual Light Co	.00011
Benton Rural Electric Assn. Inc	.00670
Big Bend Electric Coop., Inc	.00514
Blachly-Lane County Coop. Assn	.00458
Central Electric Coop., Inc	.00971
Clearwater Power Co	.00324
Columbia Basin Electric Coop., Inc	.00391
Columbia Rural Electric Assn., Inc	.00647
Consumers Power, Inc	.01351
Coos-Curry Electric Coop., Inc	.00581
Douglas Electric Coop., Inc	.00514
Elmhurst Mutual	.00581
Fall River Rural Electric Coop., Inc	.00648
Glacier Electric Coop	.00179
Hood River Electric Coop., Inc	.00301
Idaho County Light and Power Coop., Inc	.00045
Inland Power & Light Co	.02244
Kootenai Electric Coop., Inc	.00647
Lane Electric Coop., Inc	.00770
Lincoln Electric Coop (Wa.)	.00190
Lost River Electric Coop., Inc	.00134
Lower Valley Power & Light, Inc	.00837
Midstate Electric Coop., Inc	.00703
Missoula Electric Coop., Inc	.00581
Nespelem Valley Electric Coop., Inc	.00045
Northern Lights, Inc	.00514
Ohop Mutual Light Co	.00089
Okanogan County Electric Coop., Inc	.00045
Orcas Power and Light Co	.00647
Parkland Light & Water Co	.00134
Prairie Power Coop., Inc	.00089

Participant	Participant's Share
Raft River Rural Electric Coop., Inc........	.00391
Ravalli County Electric Coop., Inc..........	.00234
Rural Electric Co...........................	.00089
Salem Electric..............................	.00458
Salmon River Electric Coop., Inc............	.00084
Tanner Electric.............................	.00100
Umatilla Electric Coop. Assn................	.03573
Unity Light & Power Co......................	.00134
Vigilante Electric Coop., Inc...............	.00290
Wasco Electric Coop., Inc...................	.00134
Wells Rural Electric Co.....................	.00045
West Oregon Electric Coop., Inc.............	.00134
Total Participants Shares.....................	1.00000

PORT OF ASTORIA v. HODEL, No. 75-349 (D. Ore. Aug. 27, 1975)

An electric power sale contract between the Bonneville Power Administration (BPA) and the corporate owner of a proposed aluminum reduction plant is declared unenforceable until an adequate NEPA impact statement is prepared. A municipality which lost its bid to have the plant locate within its boundaries lacks standing to sue under NEPA because its interest in this litigation is solely pecuniary and thus not within the zone of interests protected by the statute. A citizens' association and several individual plaintiffs do have standing, however, since they have alleged that they will suffer environmental injuries should the plant be constructed. The power sale agreement effectively permits the plant to operate, and such direct power sales between BPA and primary industrial users therefore constitute major federal actions which federalize essentially private projects for NEPA purposes. The aluminum plant will have obvious and significant environmental effects in the form of solid waste disposal problems, water consumption requirements, and aesthetic impacts, which must be examined in a NEPA statement. Because defendants acted in good faith in not preparing an EIS before executing the power sale agreement, the court declines to grant the extraordinary remedy of voiding the contract, but retains jurisdiction over the case in anticipation of further controversy concerning the adequacy of the completed impact statement.

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Skopil, J.

I. Nature of the Case

On April 18, 1975, the Bonneville Power Administration (BPA) contracted to deliver large quantities of electric power to defendant Alumax Pacific Corporation (Alumax) for Alumax's proposed aluminum reduction plant in Umatilla County, Oregon. Plaintiffs claim that this agreement represents a major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act (NEPA), 42 U.S.C. §4332(2)(C) (1970). Plaintiffs claim defendant Hodel, as Administrator of BPA, violated NEPA by failing to prepare an environmental impact statement (EIS) prior to executing the Umatilla contract. Plaintiffs seek the voiding of the Umatilla contract, an injunction preventing defendants from performing thereunder, or, alternatively, an order in the nature of mandamus.

I denied plaintiffs' request for a temporary restraining order at a hearing held on April 18, 1975.

II. Jurisdiction

Jurisdiction is conferred by 5 U.S.C. §§702 and 705 (1970), 28 U.S.C. §1331 (1970), 28 U.S.C. §1361 (1970), 28 U.S.C. §§2201-2202 (1970), and 28 U.S.C. §1332 (1970).

III. Background

In 1966 BPA contracted with Northwest Aluminum Co., Inc. to provide electric power for the operation of an aluminum reduction plant which Northwest planned to build on Guemes Island, Washington. Northwest then decided not to build at that site. In 1967 Northwest bought land at Warrenton, Oregon, on which to build the plant. BPA and Northwest amended the power contract to reflect the change in location.

In 1970 Alumax (then called Amax) acquired the Warrenton site from Northwest. The power contract was amended for a sixth time by substituting Alumax for Northwest. The agreement was a twenty-year contract, expiring July 19, 1986. The ninth and final amendment was executed in May, 1973. The Warrenton site was politically and environmentally controversial. The continuing controversy prompted Alumax's decision to move the plant to Umatilla County, Oregon. On April 18, 1975, the Umatilla contract was executed. The proposed plant will cost over $350 million.

The Umatilla contract requires Alumax to use the power provided exclusively for the production of aluminum and other related facilities. The Umatilla contract expires July 20, 1986, unless BPA and one or more of its industrial customers execute renewal contracts. If renewed, the Umatilla contract would expire December 31, 1994. The contract provides that Alumax could receive up to 160,000 kilowatts on its lines through March 31, 1978, and up to 320,000 kilowatts thereafter until the expiration of the contract.

The contract provides for delivery to Umatilla County. The BPA Administrator may terminate the contract if Alumax fails to proceed with "due diligence" to obtain requisite environmental approvals from all "all government agencies having jurisdiction."

BPA power sales contracts devote much of their language to when power delivery may be restricted. The Umatilla contract divides the power available to Alumax into four quartiles. The first quartile is "interruptible power," which the BPA Administrator may restrict at any time. It is essentially power generated at times of full or excess water flow over dams. The other three quartiles are classified "modified firm," providing varying degrees of reserve power for BPA. The second quartile can be restricted if there are either transmission or generation failures. The third quartile is somewhat unique to the Umatilla contract. In order to continue receiving power from the third quartile, Alumax (and presumably other industrial users) must, when the opportunity is presented for financing non-federal reserve power plants, sign guaranteed purchase contracts for the non-federal power in amounts equal to the third quartile. The industrial customers will be partially financing new non-federal generating plants. The fourth quartile is almost "firm" power and can only be briefly interrupted during certain emergencies.

BPA is the principal distributor of electric power in the Pacific Northwest, marketing most of the hydroelectric power generated in the federal Columbia River Power System. BPA distributes to approximately 153 customers, selling about 50 percent of the power consumed in the Pacific Northwest while providing about 80 percent of the high voltage transmission. BPA sells directly to 17 industrial customers, including Alumax, which accounted for 40 percent of BPA's power sales in the Pacific Northwest in 1974.

The original plaintiffs in this case were the Port of Astoria and Concerned Citizens of Clatsop County. The Port is a municipal Corporation statutorily charged with promoting its commercial interests. Concerned Citizens is a collection of 684 dues-paying members sharing an interest in the Alumax plant. Hermiston Broadcasting Corp. operates a radio station in Umatilla County. The five individual co-plaintiffs variously live, own property, have business interests, and/or spend leisure time in the area of the proposed Umatilla plant site.

IV. Standing

The threshold issue is standing. Plaintiffs base their standing to sue on §10 of the Administrative Procedure Act (APA), 5 U.S.C. §702 (1970), which provides:

> A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

Article III of the Constitution requires that I decide only actual cases or controversies. A case or controversy becomes justiciable when a party has:

> alleged such a 'personal stake in the outcome of the controversy,' *Baker v. Carr*, 369 U.S. 186, 204, as to ensure that 'the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution,' *Flast v. Cohen*, 392 U.S. 83, 101. *Sierra Club v. Morton*, 405 U.S. 727, 732 (1972).

The Supreme Court formulated a two-part test for standing to seek judicial review of federal agency actions. The party must allege that the challenged action has caused them "injury in fact" to an interest "arguably within the zone of interests" to be protected or regulated by the statute which the agency allegedly violated. *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970).

Recently the Supreme Court has emphasized the exacting causal relationship required between the illegal practice and the actual injury suffered or about to be suffered by the complainant. *Warth v. Seldin*, 43 U.S.L.W. 4906 (U.S. June 25, 1975). Justice Powell wrote at page 4909:

> Petitioners must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.

ORS 30.130 limits the power of municipal corporations such as the Port of Astoria to sue. The statute does not explicitly authorize the type of action brought here. There is a more general grant of power to ports contained in ORS 777.050(4). I need not resolve this conflict because plaintiffs brought this action under §10 of the APA. The State of Oregon cannot deprive the Port of power to sue in federal court to enforce a federally created right. *Metropolitan Paving Company v. International Union of Operating Engineers*, 439 F.2d 300 (10th Cir. 1971), *cert. denied*, 404 U.S. 829 (1971); *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963).

The Port alleges that it has been injured in four ways: (1) loss of a potential tax base, (2) loss of potential revenue, (3) loss of a financial guarantee to purchase a new dock facility, and (4) loss of approximately $250,000 out-of-pocket expenses. I must determine whether these economic interests are arguably within the zone of interests protected by NEPA.

NEPA established a national environmental policy designed to "create and maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans." Economic factors are a part of NEPA's concerns.

> Injuries of a noneconomic nature to widely-shared aesthetic and environmental interests, as well as economic injuries, can amount to an 'injury in fact' sufficient for standing under §10 [cases omitted]. Appellants here allege injury to both environmental and economic interests which are within the 'zone of interests' to be protected by NEPA. *Cady v. Morton*, Civil No. 74-1984 (9th Cir. June 19, 1975).

Cady indicates that economic and environmental interests must be linked under the NEPA zone of interest. I find the Port, despite allegations to the contrary, is solely concerned with its pecuniary interest. In this regard I am persuaded by the court's reasoning in *Clinton Community Hospital Corp. v. Southern Maryland Medical Center*, 374 F. Supp. 450 (D. Md. 1974), *aff'd*, 510 F.2d 1037 (4th Cir. 1975). The Community Hospital sued under NEPA essentially to prevent construction of a new medical center in the area. The court found that:

> plaintiff's real aim is not to improve the quality of life for this and future generations, but rather to prevent the building of a competitive hospital. . . . While showing a real injury, this status is not within the area protected or regulated by NEPA. *Id.* at 455.

The Port of Astoria lacks standing to bring this action.

Concerned Citizens of Clatsop County is an unincorporated association operating without bylaws. Members deposed by defendants did not agree on the purposes for bringing this lawsuit. However, it was authorized by the group as a whole. For an unincorporated association to acquire standing,

> [t]he association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit. *Warth v. Seldin*, *supra* at 4912.

I am troubled by the lack of unity and substance in this organization. However, some members of Concerned Citizens live, work, or spend leisure time in Umatilla County. They may suffer environmental injury. They meet the *Warth* standing test.

Hermiston Broadcasting Corp. alleges that BPA transmission lines and towers carrying power to the Alumax plant will interfere with broadcast signals from its radio station. This danger threatens the "corporate health" of the company in a way that is not threatening to individuals. Therefore the corporation has standing. *Cf. Natural Resources Defense Council, Inc. v. United States Environmental Protection Agency*, 507 F.2d 905 (9th Cir. 1974).

Like members of the Concerned Citizens group, the individual co-plaintiffs live, work, and/or spend leisure time in Umatilla County. They allege environmental injuries. They have standing to bring this action.

Plaintiffs also contend that they have standing as consumers of electric power. They contend that their electric supply will be adversely affected by the Umatilla contract. Defendants vigorously deny that the Umatilla contract will have any discernible affect on plaintiffs as consumers of electricity.

Plaintiffs have not demonstrated in the record that the Umatilla contract will actually injure them as consumers. They do not have standing as consumers.

V. Major Federal Action

NEPA requires federal agencies such as BPA to prepare a detailed EIS on each major federal action they take which significantly affects the quality of the human environment. Defendants contend that the Umatilla contract does not represent a major federal action. Therefore BPA does not need to prepare an EIS for that action.

Calvert Cliffs' Coordinating Committee, Inc. v. United States Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971), addressed the scope of NEPA. Judge J. Skelly Wright wrote an exhaustive, persuasive opinion concerning the strength and range of the mandate provided by NEPA. Judge Wright highlighted two general considerations which I consider of importance here:

(1) "The sweep of NEPA is extraordinarily broad, compelling consideration of any and all types of environmental impact of federal action." *Id.* at 1122.

(2) It is the duty of federal courts to "see that important legislative purposes, heralded in the halls of Congress, are not lost or misdirected in the vast hallways of the federal bureaucracy." *Id.* at 1111.

I find that it is the Umatilla power contract which makes possible the construction and operation of the Alumax plant at Umatilla County. BPA is the only apparent power source for Alumax. The Umatilla contract represents a major federal action under NEPA and as that language has been construed by the courts.

The plant itself is a monumental project. Its cost exceeds $350 million; it will employ approximately 800 persons; it may use as much as 2.7 billion kilowatt hours of electricity annually—an amount equal to that used by the city of Eugene each year.

BPA contends that its contract with Alumax is not federal action because power delivery is one step removed from the environmental effects of the Alumax plant. I do not agree. BPA's delivery of power permits the operation of this plant and federalizes this essentially private project. This type of federal enablement has consistently been held to be subject to NEPA. *National Forest Preservation Group v. Butz*, 485 F.2d 408 (9th Cir. 1973); *Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission*, 481 F.2d 1079 (D.C. Cir. 1973); *City of Davis v. Coleman*, Civil No. 74-1942 (9th Cir. July 30, 1975).

National Forest involved an exchange by the Forest Service of certain government land for that of a private party. Some of the former government land was to be used by a third party for development of the Big Sky Ranch in Montana. The Ninth Circuit held that NEPA encompassed indirect federal action.

> We do not 'doubt' that NEPA applies to this massive land exchange. While the federal defendants are not themselves planning to take action 'significantly affecting the quality of the human environment,' 42 U.S.C. §4332(C), the private defendants plan such action, and the exchange is an act without which such action could not be taken. The land exchange is thus analagous to the licensing of or granting of federal funds to a nonfederal entity to enable it to act. Such federal 'enablement' has consistently been held to be subject to NEPA. *Id.* at 411-412.

The court in *Scientists' Institute* held that an AEC technology development program was "major federal action" even though the environmental impacts would not be caused directly by the AEC but rather by utilities making use of the technological developments.

> Thus there is 'Federal action' within the meaning of the statute not only when an agency proposes to build a facility itself, but also whenever an agency makes a decision which permits action by other parties which will affect the quality of the environment. . . . Development of the technology is a necessary precondition of construction of any plants. *Id.* at 1088-1089.

City of Davis involved a proposed freeway interchange designed to stimulate and service future industrial development. In view of the potential effects of such development upon the environment, the Ninth Circuit held that an EIS was required.

> Nor does characterization of industrial development as a 'secondary' impact aid the defendants. As the Council on Environmental Quality only recently pointed out, consideration of secondary impacts may often be more important than consideration of primary impacts. . . .
>
> The defendants have also objected that the environmental consequences of development will result from local and private action, not federal action, and that therefore they need not consider the consequences of development in determining whether an EIS is required. They are wrong. It must be remembered that the main purpose of the interchange, and its only credible economic justification, is to provide access to the Kidwell area for future industrial development. The argument that the principal object of a federal project does not result from federal action contains its own refutation. *Id.* at 19-21.

The federal Council on Environmental Quality (CEQ) agrees with these judicial interpretations. CEQ has promulgated guidelines for the preparation of environmental impact statements which define types of actions covered by the act to include projects "supported in whole or in part through Federal contracts." 40 C.F.R. §1500.5(a)(2) (1974).

NEPA is indeed strong medicine.[1] BPA distributes relatively cheap federal hydro power which is very attractive to heavy industrial users. Compliance with NEPA will ensure that BPA gives meaningful consideration to environmental factors at all stages of its decision-making process in supplying power to private industry.

BPA claims it does not have the ability to regulate the environmental conduct of its customer utilities and their customers. It is by statute a mere distributor. Yet the Umatilla contract does not obligate BPA to deliver power unless Alumax proves full compliance with environmental regulations and the BPA Administrator's environmental concerns.

I do not hold that every BPA contract requires similar NEPA observence. BPA is a marketing agent gathering power from various sources to sell to public and some private utilities. It may be impractical or impossible to determine the uses by the ultimate consumers.

However, BPA also sells directly to "primary industrial users." These are manufacturing plants dependent on BPA for their operations. They number 17, including Alumax. In 1974 these industrial customers purchased about 22 billion kilowatt hours. BPA's total sales were about 56 billion kilowatt hours. The uses of this power and its environmental effects are readily determined by BPA. Direct sales to large industrial purchasers by BPA cannot be consummated before an EIS is made.

BPA argues that an EIS filed in August, 1974, adequately assesses the environmental impact of direct sale to industrial customers. I do not agree. This "wholesale power" EIS deals primarily with the effect on energy consumption of varying wholesale price rates. It does not adequately consider the environmental effects of the sale of the industrial-grade power, nor could it have considered the recently signed Umatilla contract.

Defendants contend that the Umatilla contract does not represent "major federal action" because that contract requires no new commitment of power resources. The contract merely provides for a change in location of a continuing obligation. A change in the distribution point may conceivably be minor in BPA's overall marketing picture, but the enabling of indirect effects obviously represents a major shift. The plant will now be built in Umatilla County, not Warrenton. The contract is new, not merely an amended Warrenton contract.

A provision in the Umatilla contract would extend BPA's power obligations until 1994 if other major industrial users sign similar contracts. BPA's Administrator, Hodel, regards such signings as a foregone conclusion. In these proposed contracts Alumax and other industrial users will accept lower grades of power in exchange for extended duration of their contracts. These contracts will enable BPA to cover reserve shortages forecast at the end of this decade without having to breach any industrial user contracts. The Umatilla contract will contribute to BPA's reserve resources. The change in duration and location represents major federal action.

Because I found that the Umatilla contract represents a major federal action under the enablement theory, it is not necessary that I reach plaintiff's other contentions regarding major federal action. However, because the questions raised by these contentions will affect future BPA contracts, I shall state that the Umatilla contract is also rendered major federal action because it is a significant step in the so-called "Phase 2" policy of Pacific Northwest power suppliers and because major transmission lines will be constructed to the Umatilla plant.

The Umatilla contract implements a federal policy which BPA calls "Phase 2 of the Hydro-Thermal Program" (Phase 2).

From 1968 BPA and publicly and privately owned utilities have co-operated under a generalized policy regarding the power supply in the Pacific Northwest. The original joint effort, called Phase 1, intended to cover the Northwest's power needs through the 1980's. However, unanticipated shortages and construction delays required another long-range plan. This plan, Phase 2, expects to meet the Pacific Northwest's power needs beyond 1981. Industrial power contracts of the type signed by Alumax are an integral feature of Phase 2, especially the reserves and financing provided by the third quartile provision.

BPA objects that Phase 2 is not major federal action. BPA contends Phase 2 is merely the continuation of Phase 1—a viable pre-NEPA policy. BPA argues that Congress has granted BPA unimpeded marketing authority separate from NEPA; that Phase 2 is mere non-obligatory policy with no action required; that BPA plays only a minor role in Phase 2 with no power to demand cooperation; and finally, that the Umatilla contract plays an undeterminable, minimal role in Phase 2 and does not affect the amount of power available in the future.

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[1] As a philosophical matter, I am deeply disturbed by the pervasive intrusion of the federal government into the private sphere which NEPA exemplifies. It is for Congress, however, and not the courts to determine such questions of national policy.

BPA's objections lack substance. The industrial contracts—the key feature of Phase 2—are intended to increase BPA's power reserves by 1981 in an amount equal to that produced by a nuclear generating plant. By manipulating the grades of power, BPA has in effect constructed a future nuclear plant. Admittedly, cancelling the Umatilla contract would not provide BPA with additional power to sell, but it would increase BPA's annual reserves in an amount equal to the power used by Eugene, Oregon. Phase 2 is a strong policy in its own right. It enables BPA to avoid costly breaches of contract as the strain on its wholesale reserves becomes more critical. BPA previously tried to withdraw from the Warrenton contract because of its concern with future reserve shortages.

BPA markets 50 percent of the Pacific Northwest's power. It is physically and practically dominant in Phase 2. By requiring industrial customers to sign contracts with the third quartile provision, BPA ensures the financing of the necessary thermal generating plants for public and private utilities. If Phase 2 is merely a continuation of Phase 1, then the third quartile provision is sufficiently different to require an EIS. *Cf. Lathan v. Brinegar*, 506 F.2d 677 (9th Cir. 1974); *Jicarilla Apache Tribe of Indians v. Morton*, 471 F.2d 1275 (9th Cir. 1973).

The Umatilla contract will require BPA to construct substantial, high-voltage transmission facilities. BPA contends this action is not ripe for an EIS because the exact source and destination of the power required by the contract is not yet known. BPA will prepare an EIS before construction only to consider the various alternate routes for the lines. This position was upheld in *Murphy v. Morton*, Civil No. 3721 (E.D. Wash. Oct. 12, 1973), *appeal docketed*, No. 74-1328 (9th Cir. Feb. 27, 1974).

BPA ignores the clear, oft-cited holding of *Calvert Cliffs'*, *supra*, that NEPA requires a federal agency to take "... into proper account all possible approaches to a particular projects (including total abandonment of the project)." *Id.* at 1114. When BPA signs a retail industrial user contract, it must consider the option of building no transmission lines in balancing the environmental costs and benefits of the project.

VI. Significantly Affecting the Environment

The Alumax plant will have obvious, significant environmental impacts on Umatilla County. Under the enablement theory, BPA is responsible for these impacts.

The Alumax plant will have a severe impact on the area's water supply. Umatilla County is not blessed with an abundant water supply, yet the Alumax plant will consume about 645,000 gallons per day. There will be solid waste disposal problems and possible effects on the nearby Columbia River.

Alumax will construct a $350 million plant in a sparsely populated, rural, agricultural area affectionately characterized by BPA as "sand and sagebrush." The aesthetic impact is obvious. There will also be a massive impact on the general community characteristics which were considered under NEPA in *Goose Hollow Foothills League v. Romney*, 334 F. Supp. 877 (D. Ore. 1971), and *Hanley v. Mitchell*, 460 F.2d 640 (2d Cir. 1972), *cert. denied*, 409 U.S. 990 (1972).

BPA argues that various state and local agencies can better consider these environmental impacts. BPA also argues that other state and federal agencies have exclusive control over some of these environmental impacts which it may not usurp.

NEPA requires every federal agency independently to balance all the costs and benefits of its actions.

> NEPA, first of all, makes environmental protection a part of the mandate of every federal agency and department. The Atomic Energy Commission, for example, had continually asserted, prior to NEPA, that it had no statutory authority to concern itself with the adverse environmental effects of its actions. Now, however, its hands are no longer tied. It is not only permitted, but compelled, to take environmental values into account. *Calvert Cliffs'*, *supra* at 1112.

The agency with overall responsibility for the federal action may best carry out the environmental study. NEPA imposes non-delegable duties. The primary agency may, however, incorporate into its EIS studies prepared by other agencies. *Cf. Life of the Land v. Brinegar*, 485 F.2d 460, 467-468 (9th Cir. 1973), *cert. denied*, 416 U.S. 961 (1974).

Plaintiffs also contend that the execution of the Umatilla contract will cause severe impacts upon the quality of the environment in Warrenton and Clatsop County. Plaintiffs argue that BPA's agreement to supply power in Umatilla County effectively frees Alumax from any commitment to build at Warrenton. I do not agree that BPA is responsible for causing Clatsop County to lose beneficial aspects of its environment which it never had.

BPA did not refuse to supply power to the proposed Warrenton plant site. The decision not to build at Warrenton was entirely Alumax's. Federal agencies cannot be held responsible for independent decisions by private parties not to do something.

BPA did fell some trees in Clatsop County on its right-of-way for transmission lines, but this action was covered by an EIS prepared for the transmission line planned for Warrenton.

VII. Ripeness

The defendants argue that the issues in this case are not ripe for judicial consideration because Alumax has not obtained all the necessary state and local permits to build and operate the plant. They suggest the plant may never be built.

Nothing in the record indicates that Alumax is not moving with "due diligence" to secure the necessary permits. Nor does anything in the record indicate that the plant will not be built. The Court of Appeals of this circuit has indicated that an EIS is required at the outset of federal action in a proposed project. *Lathan v. Brinegar*, *supra*. Plaintiffs' claims are ripe for judicial determination

VIII. Remedy

Plaintiffs contend that I should declare the Umatilla contract void and reinstate the Warrenton contract. This would be an extraordinary remedy.

Plaintiffs argue that the "Umatilla contract" was substituted for the "Warrenton contract." They note that §6 of the APA empowers me to "hold unlawful and set aside agency action ... otherwise not in accordance with law."

I decline to grant such an extraordinary remedy. The record indicates that defendants acted in good faith in not preparing an EIS before signing the Umatilla contract. Another federal court had ruled in their favor in related circumstances. *Sierra Club v. Hodel*, *supra*.

I declare the Umatilla contract unenforceable until an acceptable EIS has been prepared, circulated, and filed. I anticipate controversy over the completed EIS. I retain jurisdiction of the proceeding until the EIS shall have become final as provided by law.

This Opinion shall constitute findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52(a). Counsel for plaintiffs shall submit a form of judgment order.

PORT OF ASTORIA, OREGON, an Oregon Municipal Corporation, Concerned Citizens of Clatsop County, an Unincorporated Association, Dorothy Reikkola and Robert A. Fackler, Plaintiffs-Appellants-Cross Appellees,

v.

Donald Paul HODEL, Administrator of the Bonneville Power Administration, and Alumax Pacific Corporation, a Delaware Corporation, Defendants-Appellees-Cross Appellants.

Nos. 75-3465, 75-3621, 75-3699
and 76-1049.

United States Court of Appeals,
Ninth Circuit.

March 5, 1979.

Rehearing Denied May 7, 1979.

Various plaintiffs including an Oregon municipal corporation and port district, an unincorporated association purporting to represent the environmental interests of its members and the corporate owner of commercial radio transmission facilities brought suit under the National Environmental Policy Act, alleging that an environmental impact statement was required in connection with the execution of a power supply contract which obligated the Bonneville Power Administration, a federal agency, to supply electrical power to a proposed aluminum reduction plant. The United States District Court for the District of Oregon, Otto R. Skopil, Jr., Chief Judge, held that the contract was valid but unenforceable until the power administration had prepared and circulated an environmental impact statement. Appeals and cross appeals were taken, and the Court of Appeals, Tang, Circuit Judge, held that: (1) the port district did not have standing to bring suit; (2) the unincorporated association and certain individual plaintiffs had standing; (3) where the injury alleged by the owner of radio broadcast facilities would be the immediate and direct result of building the aluminum reduction plant, an action that would have a primary impact on the natural environment, the owner of the facilities had standing to maintain the action; (4) the power administration was required to prepare an environmental impact statement relating to the construction of the aluminum reduction plant and of power transmission lines necessary to service the plant; (5) the power administration was required to prepare an environmental impact statement on the relation between industrial firm power contracts and a certain hydrothermal power program, and (6) by declaring the contract unenforceable pending the preparation of an environmental impact statement, the district court did in fact "set aside" the power administration's action.

Affirmed.

Kennedy, Circuit Judge, concurred and filed opinion.

1. **Administrative Law and Procedure 🔑668**

In order to establish standing under the Administrative Procedure Act to seek judicial review of an agency action, plaintiff must allege that the agency action has caused him an injury in fact and that this injury is arguably within the zone of interests to be protected or regulated by the statute that the agency allegedly violated. 5 U.S.C.A. § 702.

2. **Administrative Law and Procedure 🔑668**

The prerequisite for standing under the Administrative Procedure Act that there be an actual or threatened injury in fact is mandated by the United States Constitution. 5 U.S.C.A. § 702; U.S.C.A.Const. art. 3, § 1 et seq.

3. **Administrative Law and Procedure 🔑666**

The "zone of interests" prong of the Administrative Procedure Act standing test is a nonconstitutional prudential limitation on the exercise of jurisdiction. 5 U.S.C.A. § 702.

4. **Health and Environment 🔑25.15(4)**

Where Oregon municipal corporation and port district, located wholly within Clatsop County and some distance from Umatilla County, alleged that change in site of proposed aluminum reduction plant from Clatsop County to Umatilla County would cause the district to lose a potential tax base and potential revenue and to lose a financial guarantee for purchase of a new dock facility and approximately $250,000 in out-of-pocket expenses, such alleged injuries represented only pecuniary losses and frustrated financial expectations that were not coupled with environmental considerations and, therefore, injuries were outside of the zone of interests protected by the National Environmental Policy Act and did not give the port district standing to bring suit to require preparation of an environmental impact statement in connection with the site change. National Environmental Policy Act of 1969, § 102, 42 U.S.C.A. § 4332.

5. **Health and Environment 🔑25.15(4)**

Where, though Oregon municipal corporation and port district had statutory power to establish, modify, or abolish regulations on stream pollution, the port district could not be considered primarily responsible for environmental quality nor was it required to develop and enforce environmental standards, allegations of the port district that its statutory power relating to stream pollution encompassed a concern with increases in fluoride content of river and that such increases would result from construction of proposed aluminum reduction plant, so that the port district had been improperly deprived of an opportunity to participate in administrative decision making relating to location of the plant by reason of failure to prepare an environmental impact statement did not establish that the port district had standing to bring suit under the National Environmental Policy Act to require preparation and circulation of an environmental impact statement. 5 U.S.C.A. § 702; National Environmental Policy Act of 1969, § 102, 42 U.S.C.A. § 4332; ORS 777.105, 777.120(2).

6. Health and Environment 🔑25.15(4)

Where individual plaintiffs were either members of an unincorporated environmental association or residents of county wherein proposed aluminum reduction plant was to be located and where at least some members of the association lived, worked or spent leisure time in that county, so that they could be expected to suffer injuries that would allegedly arise from the plant, the association and the named individuals who resided in the county had standing to bring suit under the National Environmental Policy Act based on allegation that the proposed construction and operation of the aluminum reduction plant would cause diminution in county's existing water supply, an increase in deposits of solid wastes, the emission of fluorides and other pollutants into the air and water, impacts on agriculture, wildlife and the enjoyment of recreational facilities as well as demographic upheavals attended by housing, schooling and traffic problems; such alleged injuries were within the NEPA's zone of interests. 5 U.S.C.A. § 702; National Environmental Policy Act of 1969, § 102, 42 U.S.C.A. § 4332.

7. Health and Environment 🔑25.15(4)

Pecuniary injuries not coupled with environmental considerations do not establish standing to bring suit to enforce the environmental impact statement provisions of the National Environmental Policy Act. National Environmental Policy Act of 1969, § 102, 42 U.S.C.A. § 4332.

8. Health and Environment 🔑25.15(4)

Though injury to owner of radio broadcast facilities that would result from interference with broadcasts arising from certain transmission lines that would be necessary to service proposed aluminum reduction plant could be classified as economic, where the expected injury would be the immediate and direct result of building the plant, an action that would have a primary impact on the natural environment, such injuries had necessary causal relation to an act within the scope of the National Environmental Policy Act and, therefore owner of radio facilities had standing to bring suit under the NEPA based on allegation that execution of contract enabling the construction and operation of the plant and of the transmission lines required an environmental impact statement. 5 U.S.C.A. § 702; National Environmental Policy Act of 1969, § 102, 42 U.S.C.A. § 4332.

9. Health and Environment 🔑25.10(5)

Under rule that an environmental impact statement is required to assess a major federal project initiated before the effective date of the National Environmental Policy Act when the project entails a further major action which will occur after NEPA's effective date and which is such as to significantly affect the quality of the human environment, where post-NEPA contract allowed change in site of proposed aluminum reduction plant from one county to another and where, in terms of environmental consequences, the change in location initiated what was in effect an entirely new project affecting an area not contemplated by earlier contracts and where the plant would significantly affect the human environment of the county wherein it was built, it was necessary to prepare an environmental impact statement on the proposed plant and associated transmission lines even though Federal Power Administration's obligation to supply power to plant operator was a continuing commitment that antedated the NEPA. National Environmental Policy Act of 1969, § 102, 42 U.S.C.A. § 4332.

10. Health and Environment ⇐25.10(3)

Execution of power supply contract obligating Federal Power Administration to supply electrical power to proposed aluminum reduction plant was a "major federal action" requiring an environmental impact statement where the contract created a new commitment of the power administration's energy resources and set the stage for the second phase of a hydrothermal power program which amounted to a regional proposal for development and distribution of power resources in the administration's marketing region. National Environmental Policy Act of 1969, § 102, 42 U.S.C.A. § 4332.

See publication Words and Phrases for other judicial constructions and definitions.

11. Health and Environment ⇐25.10(8)

Where Federal Power Administration and its industrial customers were already operating under agreements that were in effect industrial firm power contracts and where the power administration had no apparent intention of abandoning its industrial sale policy and was prepared to execute industrial firm power contracts with major customers, the National Environmental Policy Act did not permit delaying assessment of environmental factors until the administration was faced with the reality of executed contracts; rather, assessment should occur at an early stage when alternatives were possible and environmental damage could be mitigated and, therefore, power administration's argument that preparing environmental impact statement relating to long-range regional proposal for development and distribution of power resources would be premature because execution of contracts by industrial customers as a mere contingency was rejected. National Environmental Policy Act of 1969, § 102, 42 U.S.C.A. § 4332.

12. Health and Environment ⇐25.10(3)

Although long-range regional hydrothermal power program was a cooperative enterprise involving Federal Power Administration and nonfederal participants, where it was Federal Power Administration's participation that integrated the entire program and where the Federal Power Administration would act as agent for power produced by thermal plants and would to a large extent assure the success of the plants by selling power to its own direct service industrial customers and, without the federal agency's involvement, it was doubtful that the program would ever have been developed or, if developed, would have been feasible, proposed hydrothermal power program, amounting to a regional proposal for development and distribution of power resources in the federal administration's marketing region, was a "federal program" for purposes of the National Environmental Policy Act environmental impact statement requirements. National Environmental Policy Act of 1969, § 102, 42 U.S.C.A. § 4332.

See publication Words and Phrases for other judicial constructions and definitions.

13. Health and Environment ⇐25.15(6)

By declaring power supply contract unenforceable pending preparation of an environmental impact statement, district court did in fact "set aside" Federal Power Administration's execution of the contract, for purposes of the Administrative Procedure Act provision requiring a reviewing court to "set aside" agency action taken without observance of required procedure. 5 U.S.C.A. § 706(2)(D); National Environmental Policy Act of 1969, § 102, 42 U.S.C.A. § 4332.

Diarmuid F. O'Scannlain (argued), Portland, Or., Larry Gutteridge (argued), Portland, Or., for plaintiffs-appellants-cross appellees.

James P. Rogers (argued), of Davies, Biggs, Strayer, Stoel & Boley, Portland, Or., for defendants-appellees-cross appellants.

Appeal from the United States District Court for the District of Oregon.

Before KENNEDY and TANG, Circuit Judges, and JAMESON,* District Judge.

TANG, Circuit Judge.

This case consists of appeals and cross appeals from a judgment that held a power supply contract between the defendants valid, but unenforceable, until the contract's implications had been assessed in environmental impact statements (EIS's) pursuant to section 102 of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332. The contract (referred to herein as the "Umatilla contract") obligates the Bonneville Power Administration (BPA) to supply electrical power to an aluminum reduction plant that Alumax Pacific Corporation (Alumax) plans to build and operate in Umatilla County, Oregon. The plaintiffs claimed that the execution of the contract was major federal action under § 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C), for more reasons than BPA's commitment to supply power to one large industrial site. Their contentions covered a broad area that runs from the contract's ultimate consequences in Umatilla County and Clatsop County, Oregon to the effect on power allocation and availability caused by new "industrial firm power contracts" and their relation to a long term power policy known as "Phase 2 of the Hydro Thermal Power Program." The plaintiffs requested the district court to avoid the contract in its entirety. But, although the court ordered compliance with NEPA, it did not declare the contract void. For the reasons that follow, we affirm the judgment of the district court.

I. *BACKGROUND*

A. *BPA's Role in the Scheme of Power Distribution in the Pacific Northwest*

BPA, a federal agency established in 1937 pursuant to the Bonneville Dam Act, 16 U.S.C. §§ 832–832*l*, markets the electrical power generated by the federal dams on the Columbia River. Its service territory extends over Oregon, Washington, Idaho, and that part of Montana west of the continental divide. BPA sells approximately 50 percent of the electrical power used in this region and provides approximately 80 percent of the region's high voltage transmission.

BPA sells its power in various grades through formal contracts with its different customers. As relevant here, these customers include industrial users and publicly and cooperatively owned nonfederal utilities. Under 16 U.S.C. § 832c(a), the utilities are preference customers. The grade of power sold reflects BPA's contractual ability to restrict under defined circumstances the amount of power supplied to a customer. The highest grade of power is "firm power." This is a preference power that, apart from unavoidable circumstances, must be continuously supplied. At the opposite end of the power scale is "interruptible power," generated at times of high water flow or lower power demands and subject to restriction at BPA's discretion. Between these two extremes are other grades of power that vary according to BPA's right to restrict supply. All restrictable grades of power play an important role in the scheme of power distribution because the contractual right to restrict delivery provides a source of reserve power that can be applied to fulfillment of firm power needs.

BPA is required to meet its preference customers' electrical load growth until 1983. However, in 1968 BPA and the region's nonfederal utilities predicted that BPA's existing hydroelectric generating facilities would be insufficient to meet projected growth because the Columbia River's generating capabilities have been almost fully exploited. Accordingly, they embarked upon a cooperative enterprise now known as "Phase 1" of the Hydro Thermal Power Program. Under Phase 1, the nonfederal utilities would create new power sources by building thermal generating plants. The output of these plants would then be purchased by BPA, melded with its hydroelectric power, and sold to its customers at a pool rate. This arrangement would provide a market for the utilities' new power. Seven Phase 1 thermal generating plants are under construction. However, much of the mechanism of Phase 1 became unfeasible largely because, under a new Treasury regulation, the bonds issued for construction of thermal plants lost their tax exempt status.[1]

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* Honorable William J. Jameson, Senior United States District Judge for the District of Montana, sitting by designation.

In response to Phase 1's problems, "Phase 2" of the Hydro Thermal Power Program was formulated between BPA, its industrial customers, and nonfederal public, cooperative, and investor-owned utilities. The program was then announced in a press release of December 1973. Broadly, Phase 2 is a cooperative effort that contemplates the construction of thermal generating plants in addition to those initiated under Phase 1. Two of Phase 2's principal problems are how the thermal facilities are to be financed and how power reserves are to be maintained to meet firm power commitments. The resolution of these problems entails a change in BPA's role from purchaser of the nonfederal utilities' thermal output to sales agent for this output among BPA's industrial customers.[2] It also entails the alteration of BPA's relationship with its industrial customers through the introduction of "industrial firm power contracts" that provide for delivery of "industrial firm power." This latter term does not define one particular grade of power. Rather, it denotes a new method or structure for distributing power to industry.

In the past, it has been BPA's policy to obtain from industry a portion of the reserve power used as backup for its firm power commitments by providing industrial customers with restrictable grades of power. The reliance on industry increased under Phase 1 in order to protect firm power commitments in the event that construction of thermal plants fell behind schedule or the plants initially operated below capacity. In 1971 BPA adopted an industrial sales policy that eventually came to fruition in December 1974 with the introduction of the proposed industrial firm power contracts. Under these contracts, BPA divides an industrial customer's contractual power demand into four "quartiles" of power of varying grades that, on the whole, constitute a lower or more restrictable grade of power than that which BPA provides under existing industrial contracts due to expire in 1981–86. In addition, the third quartile of these contracts embodies a specific Phase 2 element in that it allows BPA at a future date to require the industrial customer either to shift the source of power provided under the third quartile from BPA to a nonfederal Phase 2 thermal generating plant or to accept from BPA a lower grade of power for that quartile. Although the industrial firm power contracts provide a more restrictable grade of power, BPA seeks to make them attractive by offering to extend their term to 1994.

Industrial firm power contracts have several functions. The generally more restrictable grade of power provided in the quartiles other than the third quartile allows BPA to expand its reliance on industry for BPA's own reserve power necessary to meet possible difficulties in fulfilling BPA's contractual firm power commitments through 1983. On the other hand, the third quartile aims at the independence of thermal generating plants by obtaining from industry an advance market for the plants' output. This market helps to finance the plants and allows the nonfederal utilities to build thermal plants larger than those dictated by present demands. Further, if an industry elects not to shift the source of the power provided in the third quartile, BPA's right to restrict the power in that quartile aids in creating a regional reserve of power that can be distributed to nonfederal utilities whose thermal plants may be behind schedule or operating below capacity.

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[1] In addition, BPA planned to bill utilities participating in thermal plants and providing BPA with thermal power by subtracting the amount of power they sold to BPA from the amount of power they purchased from BPA's pool. Due to the higher cost of thermal power, this billing method became uneconomical for BPA.

[2] These customers purchased 40 per cent of BPA's own output in 1974, the year before this suit commenced.

B. *BPA and Alumax*

In 1966, BPA and Northwest Aluminum Company entered into a contract for the supply of power to an aluminum reduction plant to be built on Guemes Island in the State of Washington. An amendment to the contract provided for delivery of power to a new proposed plant site at Warrenton in Clatsop County, Oregon. In September 1970 the contract was assigned to Alumax, then known as Amax Pacific Corporation. In its final form, the contract (referred to herein as the "Warrenton contract") provided the proposed plant with a contract demand of 240 megawatts.[3] BPA also planned on the delivery of an additional 80 megawatts of interruptible power.[4] Thus, the proposed plant's capacity would have been 320 megawatts.

Plans for building the Warrenton plant proceeded and Alumax filed applications for permits with the Oregon Department of Environmental Quality. However, in late 1974 the Oregon Environmental Quality Commission began to consider a proposal to declare the area of the Warrenton site (the Youngs Bay Estuary) a special problem area in which fluoride emissions would be forbidden. Alumax cannot build an aluminum reduction plant that does not emit fluorides. Alumax, therefore, decided to relocate the proposed plant to another site. Its decision was facilitated by BPA's willingness to deliver power to a plant to be built in Umatilla County. Consequently, in March 1975 BPA and Alumax executed the contract in question in this case (the "Umatilla contract") and Alumax withdrew its permit applications for the Warrenton site.

The Umatilla contract provides for a contract demand of 320 megawatts. It is also the first executed industrial firm power contract and contains a third quartile provision as described above. None of BPA's other industrial customers have executed industrial firm power contracts although they are operating under provisions like those of the Umatilla contract through letter agreements with BPA terminable by either party on 30 days' notice. The Umatilla contract provides that the contract's term will be extended from 1986 to 1994 as soon as one other industrial customer executes a formal industrial firm power contract.

C. *The Proceedings Below*

This suit was filed on the day the Umatilla contract was executed. The plaintiffs in the district court were the Port of Astoria (the "Port"), an Oregon municipal corporation and port district organized pursuant to Or.Rev.Stat. §§ 777.005–777.990; Concerned Citizens of Clatsop County ("Concerned Citizens"), an unincorporated association purporting to represent the environmental interests of its members; Hermiston Broadcasting Co. ("Hermiston"), an Oregon corporation with commercial radio transmission facilities in Umatilla County; and five named individuals who were either members of Concerned Citizens or residents of Umatilla County.[5]

The plaintiffs alleged that, under § 102(2)(C) of NEPA, the execution of the Umatilla contract required an EIS because it was major federal action in the following respects:

1. It changed the site of the proposed plant from the Warrenton site in Clatsop County to a distant location in Umatilla County.
2. It enabled the construction and operation of the Umatilla plant and the transmission lines necessary to service it.

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[3] A "megawatt" equals 1,000 kilowatts.

[4] At the time of the contract's formulation, it was BPA's policy not to include interruptible power in the formal contract power demand.

[5] Hermiston and three of the individually named plaintiffs have neither appealed nor otherwise appeared in this court.

3. It obligated BPA to supply Alumax with a large amount of power in a time of forecasted power deficits.
4. It was the first industrial firm power contract and it contained a third quartile provision. It therefore initiated Phase 2 of the Hydro Thermal Power Program.

The district court refused to issue a temporary restraining order to enjoin the execution of the contract. After a nonjury trial and related conferences and hearings, the court held that the contract was valid but unenforceable until BPA had prepared and circulated an EIS, and, after having considered the EIS, reaffirmed the decision to execute the Umatilla contract on the basis of the environmental alternatives available to BPA immediately prior to the execution of the contract including delivery of power to the Warrenton site. It further ordered that the EIS include a consideration of the Phase 2 aspects of the contract. In addition, the court dismissed the Port of Astoria's complaint for lack of standing. Finally, the court retained jurisdiction in order to resolve controversies concerning the implementation of the judgment, including controversies relating to the adequacy of any EIS.

II. *DISCUSSION*

A. *Standing*

[1] In both the district court and this Court, BPA and Alumax have attacked each plaintiff's standing to bring suit. The plaintiffs assert that they have standing under § 10 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 702, providing in relevant part that a person "adversely affected or aggrieved by agency action within the meaning of the relevant statute" may seek judicial review of the agency action. To show that he has standing to seek such review, however, a plaintiff must allege that the agency action has caused him an "injury in fact" and that this injury is "arguably within the zone of interests to be protected or regulated" by the statute that the plaintiff claims the agency violated. *Association of Data Processing Organizations, Inc. v. Camp*, 397 U.S. 150, 153, 90 S.Ct. 827, 830, 25 L.Ed.2d 184 (1970); *Barlow v. Collins*, 397 U.S. 159, 90 S.Ct. 832, 25 L.Ed.2d 192 (1970); *Sierra Club v. Morton*, 405 U.S. 727, 732–33, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972).

[2, 3] In *Warth v. Seldin*, 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975), and *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976) (suit brought under § 10 of the APA), the Supreme Court has clarified the "injury in fact" prong of the APA standing test. We have stated on the basis of these cases that:

> Compactly put, the test for standing . . . is that the plaintiffs must have alleged (a) a particularized injury (b) concretely and demonstrably resulting from defendants' action (c) which injury will be redressed by the remedy sought.

Bowker v. Morton, 541 F.2d 1347, 1349 (9th Cir. 1976) (NEPA claim raised). *See also Starbuck v. City and County of San Francisco*, 556 F.2d 450, 457–59 (9th Cir. 1977). The requirement that there be an actual or threatened "injury in fact" is mandated by article III of the Constitution. However, the "zone of interests" prong of the APA standing test is a nonconstitutional prudential limitation on the exercise of jurisdiction. *Simon, supra*, 426 U.S. at 39 n.19, 96 S.Ct. 1917.[6]

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[6] The Supreme Court's recent discussions of standing have centered for the most part on article III's requirement of an "injury in fact." *Warth* and *Simon, supra*. The "zone of interests" requirement, however, has received only passing mention. *Simon, supra*, 426 U.S. at 39 n.26, 96 S.Ct. 1917. *See also Sierra Club v. Morton*, 405 U.S. 727, 733 n.5, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972). Nonetheless, case law indicates that the requirement is applicable to suits brought under NEPA. *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 686 n.13, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973). *Cf. Bowker, supra*, 541 F.2d at 1349 ("zone of interests" requirement noted, but not applied because there was no injury in fact). Further, the requirement has vitality in cases brought under § 10 of the APA. *Starbuck, supra*, 556 F.2d at 457–58; *Sierra Club v. Morton, supra*, 405 U.S. at 733, 92 S.Ct. 1361.

1. *Port of Astoria*

[4] The Port is a port district located wholly within Clatsop County which lies in a part of Oregon at some distance from Umatilla County. The Port alleged that the change in the Alumax plant's site would cause it to suffer losses of potential tax base and potential revenue, loss of a financial guarantee for purchase of a new dock facility, and loss of approximately $250,000 out-of-pocket expenses. These alleged injuries represent only pecuniary losses and frustrated financial expectations that are not coupled with environmental considerations because they are caused solely by the relocation of the Alumax plant from Clatsop County to Umatilla County. Consequently, the alleged injuries are outside of NEPA's zone of interests and are not sufficient to establish standing. *Realty Income Trust v. Eckerd*, 183 U.S.App.D.C. 426, 431, 564 F.2d 447, 452 (1977); *Robinson v. Knebel*, 550 F.2d 422, 424–25 (8th Cir. 1976); *Churchill Truck Lines, Inc. v. United States*, 533 F.2d 411, 416 (8th Cir. 1976); *Clinton Community Hospital Corp. v. Southern Maryland Medical Center*, 374 F.Supp. 450 (D.Md.1974), *aff'd*, 510 F.2d 1037 (4th Cir.), *cert. denied*, 422 U.S. 1048, 95 S.Ct. 2666, 45 L.Ed.2d 700 (1975).

[5] In addition to advancing pecuniary injuries, the Port asserts that its statutory power to formulate rules and regulations to prevent estuary and stream pollution within the boundaries of its district (Or.Rev.Stat. § 777.120(2)) encompasses a concern with the proposed Umatilla plant's increasing the fluoride content in the Columbia River where it flows in Clatsop County. From this premise, it argues that it has been injured because the failure to prepare an EIS on the Umatilla contract has deprived it of an opportunity to participate in the administrative decisionmaking process. § 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C).

For this argument, the Port relies on *City of Davis v. Coleman*, 521 F.2d 661, 672 (9th Cir. 1975), where the City of Davis was found to have standing to compel the preparation of an EIS on the proposed construction of an interstate freeway exchange outside the city's limits. Because California law required the city to formulate a general plan that should include development and enforcement of environmental standards, this Court concluded that the city was a "local agency" under § 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C), and entitled by the statute to comment on any EIS concerning the proposed interchange. On this basis, the Court held that failure to file an EIS deprived the city of this entitlement and that the deprivation constituted an injury sufficient by itself to give the city standing.

The City of Davis's standing depended upon its characterization as a "local agency" authorized "to develop and enforce environmental standards." § 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C). The Port, however, cannot be so characterized. In commenting upon the term "local agency," the Conference Report on NEPA, approved by both Houses of Congress, states:

> With regard to State and Local agencies, it is not the intention of the conferees that those Local agencies with only a remote interest and which are not primarily responsible for development and enforcement of environmental standards be included.

H.R.Rep.No.91–765, 91st Cong., 1st Sess. at 8, *reprinted in* [1969] U.S.Code Cong. & Admin.News pp. 2751, 2767, 2769. Moreover, regulations of the Council of Environmental Quality refer to "state and local environmental agencies." *See* 40 C.F.R. § 1500.9(c) (1977). The Port, however, cannot be considered to be primarily responsible for environmental quality. It has numerous duties regarding navigation and commerce including the improvement of bays, rivers, and harbors and the construction of port facilities, canals and waterways. *See, e. g.*, Or.Rev.Stat. § 777.105. Further, unlike the City of Davis, the Port is not required to develop and enforce environmental standards. Rather, under Or. Rev.Stat. § 777.120(2), the Port may make, establish, change, modify, or abolish regulations on stream pollution.

In conclusion, the district court properly dismissed the Port's complaint for lack of standing.

2. *Concerned Citizens of Clatsop County and the Individual Plaintiffs Residing in Umatilla County*

[6] Concerned Citizens and the individual plaintiffs alleged ecological and aesthetic injuries resulting from the construction and operation of the Alumax plant in Umatilla County. They also advanced economic and social injuries that are directly brought into play by the plant's possible existence. Thus, they have alleged that the plant will cause a diminution in Umatilla County's existing water supply, an increase in the deposit of solid wastes, the emission of fluorides and other pollutants into the air and the Columbia River, impacts upon agriculture, wildlife and the enjoyment of recreational facilities, and demographic upheaval attended by housing, schooling, and traffic problems.

[7] Concerned Citizens and the individual plaintiffs who reside in Umatilla County have standing on the basis of these injuries. The Umatilla County residents and some members of Concerned Citizens live, work, and/or spend leisure time in Umatilla County. Thus, they can be expected to suffer the alleged injuries. Concerned Citizens is clearly a proper representative of its members. *Warth v. Seldin, supra,* 422 U.S. at 511, 95 S.Ct. 2197; *Sierra Club v. Morton, supra,* 405 U.S. at 734–41, 92 S.Ct. 1361. Further, the injuries are within NEPA's zone of interests. *Cady v. Morton,* 527 F.2d 786, 790 n.1, 791 (9th Cir. 1975). *See also Image of Greater San Antonio v. Brown,* 570 F.2d 517, 522–23 (5th Cir. 1978).[7]

3. *Hermiston Broadcasting Company*

[8] Hermiston alleged its ownership of radio broadcast facilities in Umatilla County. It further alleged that the transmission lines to be built for servicing Alumax's Umatilla plant would interfere with its broadcasts. The injury may be classified as economic. Nonetheless, the injury is the immediate and direct result of the building of the Alumax plant, an action that "will have a primary impact on the natural environment." *See Image of Greater San Antonio v. Brown, supra,* 570 F.2d at 522. In this respect, NEPA and Hermiston—and, indeed, Concerned Citizens and the Umatilla County residents—share a common interest in the proposed construction of the Alumax plant in Umatilla County. Moreover, Hermiston's injuries, unlike the Port of Astoria's economic injuries, are causally related to an act that lies within NEPA's embrace. *National Helium Corp. v. Morton* , 455 F.2d 650 (10th Cir. 1971). *See also Gifford-Hill & Co. v. Federal Trade Commission,* 73 U.S.App.D.C. 135, 523 F.2d 730 (1975).

B. *Major Federal Action*

NEPA requires that an EIS be prepared before implementation of "major Federal actions significantly affecting the quality of the human environment." § 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C). Having considered the issues of standing, we now turn to whether such "major federal action" exists in this case.[8]

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[7] Concerned Citizens also sought to advance Clatsop County's socio-economic interests. It alleged that a plant at the Warrenton site would have resulted in various benefits including new jobs, an increase in Clatsop County's per capita income, an influx of new population, and additional substantial tax revenues that could have been applied to upgrading public facilities. The County's loss of the Alumax plant entails loss of these benefits. Nonetheless, the injuries are insufficient to establish standing. Like the Port's pecuniary injuries, they are caused only by the relocation of the Alumax plant in Umatilla County and are not coupled with environmental considerations. *See Image of Greater San Antonio v. Brown, supra,* 570 F.2d at 522. Moreover, one court has held that NEPA does not vindicate the economic and social consequences of the relocation of a government installation from one community to another. In that case, the plaintiffs anticipated a worsening of their community's socio-economic conditions. *Breckenridge v. Rumsfeld,* 537 F.2d 864 (6th Cir. 1976), *cert. denied,* 429 U.S. 1061, 97 S.Ct. 785, 50 L.Ed.2d 777 (1977). The *Breckenridge* rationale is at least applicable here where the anticipated harm amounts to frustrated expectations with no change in the socio-economic status quo.

1. *Construction of the Umatilla Plant and the Transmission Lines Necessary to Service It*

BPA argues that it is not obligated to prepare an EIS on the Umatilla plant because its commitment to supply Alumax with power arose at least at the time of the execution of the Warrenton contract and is, therefore, a continuing commitment that antedates the enactment of NEPA. BPA's argument must be rejected.

[9] This Circuit has held that an EIS is required to assess a major federal project initiated before the effective date of NEPA when the project entails a further major action that would occur after NEPA's effective date and that would significantly affect the quality of the human environment. *San Francisco Tomorrow v. Romney*, 472 F.2d 1021, 1024 (9th Cir. 1973); *Jicarilla Apache Tribe of Indians v. Morton*, 471 F.2d 1275, 1282–83 (9th Cir. 1973). The proposed construction of Alumax's Umatilla plant falls squarely within this holding. Even assuming that the Warrenton contract established BPA's continuing legal obligation to supply power to Alumax at some time and in some place, the 1975 Umatilla contract allows Alumax to change the site of its proposed plant from Clatsop County to Umatilla County. In terms of environmental consequences, this change in location initiates what is, in effect, an entirely new project affecting an area not contemplated in earlier contracts between BPA and Alumax or its predecessors. Moreover, there is no dispute that the Umatilla plant will significantly affect the human environment of Umatilla County. BPA shares responsibility for the environmental effects because its contractual obligation to supply Alumax with power enables Alumax to build the plant and requires BPA to erect transmission lines. Under similar circumstances, we have held:

> By entering into a contract to supply the power to the project and to construct the transmission line to the plant, the agency has so federalized the entire project that it has become "major Federal action" requiring a federally responsible environmental impact statement. *National Forest Preservation Group v. Butz*, 485 F.2d 408 (9th Cir. 1973).

Sierra Club v. Hodel, 544 F.2d 1036, 1044 (9th Cir. 1976).

In sum, BPA must prepare an EIS on the Umatilla plant and transmission lines. Without it, the environment of a county that suddenly found itself to be the site of the Alumax project would go without NEPA's protection.

2. *Phase 2 and the Umatilla Contract*

[10] In addition to the major federal action represented by the construction of the Umatilla plant and the transmission lines to it, the execution of the Umatilla contract is major federal action because it creates a new commitment of BPA's energy resources and sets the stage for the initiation of Phase 2 of the Hydro Thermal Power Program. These two effects of the contract are inseparably intertwined in that the power commitment to Alumax has been made by way of the first executed industrial firm power contract. Thus, service to Alumax will be integrated with Phase 2. In these circumstances, we think it appropriate that BPA prepare an EIS on industry's role in Phase 2 and that the EIS include an assessment of the new energy commitment to Alumax.[9]

The record shows that Phase 2 is a regional proposal for development and distribution of power resources in BPA's marketing region. The course of action to be followed under Phase 2 was outlined in a document entitled "Hydro Thermal Program Phase 2" attached to a BPA press release of December 1973 and resulting from an agreement between BPA, its direct-service industrial customers, and the public, cooperative, and investor-owned utilities in BPA's region. The document envisions continuation of Phase 1 thermal plants, development of new thermal plants, and sale to industry in accordance with BPA's 1971 industrial sales policy and by means of industrial contracts that incorporate "third quartile" provisions. Although details of Phase 2 may remain unsettled, it is clear that Phase 2 is a long-range regional policy with definite goals and fixed roles for participants. As such, Phase 2 is a proposal within the contemplation of § 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C). *Kleppe v. Sierra Club*, 427 U.S. 390, 96 S.Ct. 2718, 49 L.Ed.2d 576 (1976).

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[8] The effects of the execution of the Umatilla contract on socio-economic conditions in Clatsop County are, as discussed in note 7, *supra*, outside of NEPA's embrace. Therefore, there is no necessity to discuss whether the effects are major federal action.

[9] In this litigation, the plaintiffs do not raise the application of NEPA to environmental impacts resulting from the construction of thermal generating plants. Rather, they focus on the industrial firm power contracts and their role in Phase 2. *See* Reply of Appellants and Cross Appellees at 30.

[11] BPA's industrial customers are crucial to Phase 2 because of the capability of industrial firm power contracts to create reserves and to help finance thermal plants. BPA argues, however, that the execution of such contracts by its industrial customers other than *Alumax* is a mere contingency. Therefore, BPA concludes that preparation of an EIS on industry's role in Phase 2 would be premature. It is to be noted, however, that BPA and its large industrial customers are already operating under letter agreements that are, in effect, industrial firm power contracts. In addition, as far as the record shows, BPA has no intention of abandoning its industrial sales policy or the industrial firm power rate and is prepared to execute industrial firm power contracts with its major industrial customers. In these circumstances, NEPA does not permit delaying assessment of environmental factors until BPA is faced with the reality of executed contracts and the necessity of supplying power to industry until 1994. Rather, the assessment should occur at an early stage when alternative courses of action are still possible and environmental damage can be mitigated. *Friends of the Earth, Inc. v. Coleman*, 518 F.2d 323, 327 (9th Cir. 1975).

[12] BPA also asserts that Phase 2 is not a federal program. However, although Phase 2 is a cooperative enterprise involving BPA and nonfederal participants, it is BPA's participation that integrates the entire program. BPA will act as the agent for power produced by thermal plants and will to a large extent assure the success of these plants by direct sales of power to its own direct-service industrial customers. Without BPA, it is doubtful that Phase 2 would ever have been developed or, if developed, would have become feasible.

Particularly through "third quartile" provisions whereby industrial customers have the option to use thermal power or to suffer restriction of power provided in the third quartile, industrial firm power contracts help to advance the construction and operation of thermal plants. In return for executing the contracts, BPA's commitment to supply power to industry will be extended through the end of 1994. Behind the quid pro quo that the contracts represent lies the backdrop of projected substantial energy deficits. Phase 2 in all its parts is meant to meet these deficits and provide BPA's region with adequate energy in the future. This goal is laudable. Yet the ramifications of the impact that industrial firm power contracts will have on construction and operation of thermal plants have not been assessed. For example, it is unclear how much thermal power industry's new role would support. Considering the variable introduced by the third quartile, at what capacity will thermal plants operate? If all or part of BPA's industrial customers elect not to purchase thermal energy under the option provided in the third quartile and the viability of thermal plants may thereby be jeopardized, what other means (with what attendant environmental impacts) might BPA choose to meet the load growth of its preference customers? This latter question is important because the third quartile's potential for creating reserve power is fixed by contract and it is unclear whether these anticipated reserves will suffice through 1994 when industrial firm power contracts terminate. Last, what means (with what attendant environmental effects) might BPA utilize to meet through 1994 the amount of power that industry can demand as a minimum supply after BPA has exercised all its options to restrict power under industrial firm power contracts?

BPA argues that industry's role in Phase 2 has been adequately treated in BPA's 1974 Wholesale Power Rate Increase EIS. We reject this argument. The Rate Increase EIS discusses the environmental effects of a 27% increase in BPA's wholesale power rates. It is not directed towards industry's relation to Phase 2. Rather, as the district court found, it discusses the new rates' effect on energy consumption in the BPA region. Moreover, the Rate Increase EIS did not and could not have considered the power that BPA is obligated to sell to Alumax's Umatilla plant.

As for the Umatilla contract, the magnitude of BPA's power commitment can be seen when it is realized that, if the Umatilla plant operated at close to 100 percent capacity, it would consume 2.7 billion kilowatts per year.[10] In reality, this supply is restrictable to a degree, but, unlike the contract for interruptible power considered in *Sierra Club v. Hodel*, 544 F.2d 1036 (9th Cir. 1976), the Umatilla contract creates a drain on the BPA system over and above BPA's other power commitments. This additional commitment to Alumax would be operative at a time when BPA predicts considerable power deficits in its marketing region[11] and when the region's power distribution scheme is in the process of change. Moreover, the commitment will extend to 1994 as soon as one other of BPA's industrial customers executes an industrial firm power contract.

BPA argues that its power commitment to Alumax will serve merely to create additional power reserves and, therefore, does not have any environmental effects. However, BPA's position unduly isolates the Umatilla contract from the other proposed industrial firm power contracts that are an integral part of Phase 2. The Umatilla contract is integrated into Phase 2. Whether or not BPA's additional power commitment to Alumax will have a proportionally large or small effect on Phase 2 remains to be explored in the EIS that must be prepared on the relation between Phase 2 and sales of industrial firm power.

C. *Remedy*

[13] The plaintiffs argue in their appeal that the district court erred by not declaring the Umatilla contract void. Their argument rests upon § 10 of the APA, 5 U.S.C. § 706(2)(D), which provides in relevant part:

> The reviewing court shall . . . hold unlawful and set aside agency action . . . found to be . . . without observance of procedure required by law.

By declaring the contract unenforceable pending the preparation of an EIS, the district court did in fact "set aside" BPA's "action" because the Umatilla plant and BPA's transmission lines cannot be built until such an EIS is properly prepared and circulated. Thus, the contract's unenforceability preserves the environmental status quo. Further, it was the act of entering into the contract that was "without observance of procedure required by law." There is no suggestion that the terms of the contract are per se illegal in any way or exceed BPA's authority.

The plaintiffs, however, urge that a failure to void the contract means that BPA can reaffirm it after an EIS is prepared in a spirit of "grudging, *pro forma* compliance" with NEPA. *See Lathan v. Brinegar*, 506 F.2d 677, 693 (9th Cir. 1974). But this argument ignores the fact that the district court has retained jurisdiction in order to implement its judgment and has expressly retained power to resolve controversies regarding the adequacy of any EIS. Thus, the parties and the court will have an opportunity to see that there is "full, fair, bona fide compliance with NEPA." *Id.* at 693.[12]

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[10] The 320 megawatts of Umatilla contract demand are divided into four quartiles of 80 megawatts each. The first quartile is low priority interruptible power. The second provides for restriction in the event of delays in construction of the nonfederal utilities' thermal plants or the failure of the plants to operate initially at full capacity. Restriction in the third quartile depends upon the industrial customer's election not to take thermal power. Only the fourth quartile is close to being firm power.

[11] In fact, BPA had once attempted to negotiate out of the Warrenton contract.

CONCLUSION

On the record before us, we hold that BPA must prepare an EIS on the construction of Alumax's Umatilla plant and the power transmission lines necessary to service the plant. We further hold that BPA must prepare an EIS on the relation between industrial firm power contracts and the coordinated activities known as Phase 2 of the Hydro Thermal Power Program. This latter EIS should include an assessment of the additional power commitment under the Umatilla contract. Last, we hold that the Port of Astoria does not have standing in this litigation.

We realize that Phase 2 is a complex scheme carefully designed to meet a complex and critical problem. We further realize that Phase 2 may be subject to some modifications that are perhaps due in no small part to the litigation that the program has engendered. *See Natural Resources Defense Council, Inc. v. Hodel*, 435 F.Supp. 590 (D.Or.1977), *appeal docketed*, No. 78-2014 (9th Cir. May 11, 1978). However, the record before us has determined our decision in this case.

The district court's judgment specifically provided that the court would retain continuing jurisdiction to oversee the implementation of its decree. The case is now remanded to the district court. The district court may exercise such powers as are necessary to achieve a reasonable conclusion of this litigation.

KENNEDY, Circuit Judge, concurring:

I concur in the majority's opinion, but wish to add my views concerning the right of the Port to comment on environmental impact statements. In this case the Port's environmental interest seems remote and therefore it may have no right to comment, but we should avoid any conclusion that the right to comment is limited to those agencies which are concerned with a broad spectrum of environmental issues. If responsibility for a particular subject that may have environmental consequences in some cases has been allocated to a state agency, that entity is entitled to comment when its area of control and expertise is affected by a federal project. This is so even if the agency's principal jurisdiction and responsibilities do not concern environmental problems. The Port of Astoria routinely comments in EIS drafts for projects of direct concern to it, and I do not think this opinion should be understood to deny its right to comment in an appropriate case.

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[12] The plaintiffs also argue that, at the hearing on their motion for a temporary restraining order, the district court misled them by stating that it would "declare the contract illegal and of no force and effect" if the plaintiffs prevailed. The full transcription of the district court's statement reads:

> I will declare the contract illegal and of no force and effect after the hearing on the merits. So it appears that nobody is going to be damaged . . . by the signing of the contract, because this Court does have authority to . . . declare the contract illegal and of no force and effect at a later date, *if a hearing on the merits warrants that.*

Transcript on appeal, proceedings of April 18, 1975, at 52:7-14 (emphasis supplied).

This language is ambiguous at most. It certainly cannot serve to straitjacket the district court to the point where it could not perform its duty of fashioning a remedy best suited to a case's merits.

NATURAL RESOURCES DEFENSE COUNCIL, INC., the Sierra Club, Inc., Oregon Environmental Council, Washington Environmental Council, Friends of the Earth, Eugene Future Power Committee, Inc., Plaintiffs,

v.

Donald P. HODEL, in his official capacity as Administrator of the Bonneville Power Administration, and Cecil D. Andrus, in his official capacity as Secretary of the United States Department of the Interior, Defendants.

Civ. No. 75-344.

United States District Court,
D. Oregon.

July 1, 1977.

Environmental groups sought declaratory and injunctive relief claiming that National Environmental Policy Act required defendants to prepare environmental impact statement before the Bonneville Power Administration could implement phase of a long-range cooperative plan formulated to meet the forecasted electrical power needs of the Pacific Northwest. The plaintiffs moved for summary judgment. The District Court, Skopil, Chief Judge, held that: (1) plaintiffs had standing to raise issue of whether NEPA requires preparation of EIS; and (2) evidence established that the phase constituted a proposal for major federal action significantly affecting quality of human environment, within NEPA which requires preparation of an EIS for such proposal.

Judgment for plaintiffs.

1. Health and Environment ⟾25.15(4)

Environmental groups whose members lived, worked, and enjoyed recreational pursuits in areas which would be affected by activities contemplated under hydrothermal power program had standing to raise issue of whether the National Environmental Policy Act required preparation of environmental impact statement before implementation of power program. Bonnevillle Project Act, §§ 4, 5, 16 U.S.C.A. §§ 832c, 832d.

2. Health and Environment ⟾25.10(5)

Evidence established that phase of long-range cooperative plan, which was formulated to meet forecasted electrical power needs of Pacific Northwest, would require converting vast acreages from agricultural and recreational uses and require using hydroelectric generators to meet peak loads, thereby affecting recreational activities, commerce and aquatic life, that Bonneville Power Administration would play pivotal role, and that a master plan for regional development existed, so that the phase constituted a proposal for major federal action significantly affecting quality of human environment, within National Environmental Policy Act which requires preparation of an EIS for such proposal. Bonneville Project Act, §§ 1 et seq., 3-5, 16 U.S.C.A. §§ 832

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12. The special solicitude is not reserved for mariners, but extends to all who are injured within the jurisdiction. *Gaudet, supra,* 414 U.S. at 588, 94 S.Ct. at 816.

et seq., 832b-832d; National Environmental Policy Act of 1969, §§ 2 et seq., 102, 42 U.S.C.A. §§ 4321 et seq., 4332; Federal Columbia River Transmission System Act, § 2 et seq., 16 U.S.C.A. § 838 et seq.

John Roger Beers, Palo Alto, Cal., Joe D. Bailey, Hillsboro, Or., for plaintiffs.

Sidney I. Lezak, U. S. Atty., Jack G. Collins, First Asst. U. S. Atty., Thomas C. Lee, Asst. U. S. Atty., D. Or., Portland, Or., for defendants.

OPINION

SKOPIL, Chief Judge:

The plaintiffs, six environmental groups,[1] seek declaratory and injunctive relief under the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.* They claim that NEPA requires the defendants[2] to prepare an environmental impact statement (EIS) before the Bonneville Power Administration (BPA) takes any action to implement the so-called "Phase 2" of the Hydro-Thermal Power Program, a long-range cooperative plan formulated by BPA, its direct-service industrial customers, and the region's public and private utilities to meet the forecasted electrical power needs of the Pacific Northwest.

The plaintiffs have moved for summary judgment. I find that there is no genuine issue as to any material fact and that NEPA requires the defendants to prepare and EIS.

FACTS

The Bonneville Power Administration was created in 1937 by the Bonneville Project Act, 16 U.S.C. §§ 832 *et seq.*, to market electricity generated at the Bonneville Dam on the Columbia River and to develop a transmission system for delivery of the electricity generated at this facility to its customers throughout the Pacific Northwest. Under the Act, BPA is required to give preference and priority in marketing this power to public bodies[3] and cooperatives (the "preference customers").[4] Subject to the rights of preference customers, BPA may contract to sell excess power to private agencies and persons and to dispose of such power to federal agencies for a contract period not exceeding twenty years. In the case of private utilities, any contract must provide for cancellation upon five years' notice by BPA if the power is required to meet the needs of preference customers.[5]

BPA's authority has been extended over the intervening years to the marketing of power from all federal hydroelectric projects in the Columbia River drainage basin.[6] By 1974, twenty-seven such projects were in service. These projects (built and operated by the Corps of Engineers and the Bureau of Reclamation), plus BPA's transmission system, comprise the Federal Columbia River Power System. The system supplies about one-half of the electric power consumed and provides about four-fifths of the high-voltage bulk transmission capacity in the region.

BPA sells power to approximately 153 customers in the states of Oregon, Washington, and Idaho and the portion of Montana west of the Continental Divide.[7]

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[1] Natural Resources Defense Council, Inc.; The Sierra Club, Inc.; Oregon Environmental Council; Washington Environmental Council; Friends of the Earth; and Eugene Future Power Committee, Inc.

[2] The defendants originally named were Donald P. Hodel, BPA Administrator, and Rogers C. B. Morton, Secretary of the United States Department of the Interior. Pursuant to Fed.R.Civ.P. 25(d)(1), Cecil D. Andrus has been substituted for Mr. Morton as a defendant.

[3] Defined as states, public power districts, counties, and municipalities, including agencies or subdivisions thereof. 16 U.S.C. § 832b.

[4] 16 U.S.C. § 832c.

[5] 16 U.S.C. § 832d.

[6] The one exception is the Bureau of Reclamation's Green Springs project in Oregon.

[7] Designated as the "West Group Area" of the Northwest Power Pool.

These customers include some 126 utilities (mostly preference customers plus a few private utilities), fifteen direct-service industrial customers (chiefly electroprocess companies) operating twenty-two plants, and a handful of federal agencies. In fiscal year 1974, 49 percent of BPA's power sales were to preference customers, 39 percent to direct-service industrial customers, 11 percent to private utilities, and 1 percent to federal agencies.

BPA and/or its customers participate in a number of organizations which further the common goal of planning for the region's electrical needs. The Northwest Power Pool, a voluntary organization of public and private utilities and federal power suppliers (including BPA), was established in 1942 to coordinate power operations in the northwestern United States. The Pacific Northwest Utilities Conference Committee (PNUCC) was founded several years later by West Group Area member utilities of the Northwest Power Pool and other utilities in the Pacific Northwest. Twenty-four public and private utilities are now members of the PNUCC. In addition, a 130-member Policy Committee includes representatives of most of BPA's customers who are not PNUCC members.[8] One of the important functions performed by the PNUCC is preparation of annual long-range forecasts of power loads and resources in the West Group Area of the Northwest Power Pool.[9] Two other organizations active in regional power planning—the Public Power Council and the Joint Power Planning Council—were both formed in 1966. The former is a voluntary organization representing 110 publicly-owned utilities and cooperatives; the latter, an ad hoc group consisting of Public Power Council members, four private utilities, and BPA.

Through the individual and collective efforts of BPA, its customers, and other government agencies, the Pacific Northwest enjoyed for several decades an abundance of low-cost hydroelectric power. By the 1960s, however, it became apparent that insufficient hydroelectric power would be available to meet the anticipated tripling of demand within the following twenty years. The deficiency would have to be met by providing new power resources for the region.

Members of the Joint Power Planning Council therefore devised in 1968 a cooperative ten-year program—known as the Hydro-Thermal Power Program (HTPP)—to meet the region's power needs through 1981.[10] The program (now referred to as "Phase 1" of the HTPP contemplated a gradual transition from the use of all hydroelectric power for baseload energy to a mixed base of hydroelectric and thermal generating resources, with any new hydroelectric resources to be used to increase peaking capacity.[11] The controlling concept was the planning, construction, and operation of the region's power facilities as if they were under a single ownership. The utilities would build the required thermal (nuclear or coal-fired) plants; BPA would provide the necessary peaking capacity, high-voltage transmission grid, and reserves [12] and would pool the available low-cost hydro and high-cost thermal power for sale at uniform rates. The public agencies' share of the costs for construction of thermal plants would be financed through the mechanism of "net billing".[13] The immediate goals for Phase 1 included the expansion of BPA's transmission system, the addition of new hydroelectric generators for peaking, and the construction of specified thermal plants.[14]

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[8] Neither BPA nor any other federal agency is a member of PNUCC, although BPA and other federal agencies contribute to all of PNUCC's committees and task forces.

[9] See, *e. g.*, the PNUCC "West Group Forecast of Power Loads and Resources: July 1975—June 1986" furnished by the defendants in their answer to plaintiffs' interrogatory No. 23.

[10] The program is described in a document published by BPA in January, 1969, entitled "A Ten Year Hydro-Thermal Power Program for the Pacific Northwest" (Ex. A to defendants' answer).

[11] "Base load" is the minimum and "peak load" the maximum amount of power required by the system over a given period of time. "Peaking capacity" is the generating capacity available to assist in meeting that portion of peak load which is above base load. See Federal Power Commission, *Glossary of Important Power and Rate Terms*, ¶¶ 11, 83, 121, 122 (1949) [*Glossary*].

[12] "Reserve capacity" is generating capacity required to meet demands for power in excess of peak load. See *Glossary*, ¶ 148. Such demands may arise because of maintenance or emergency outages of generating facilities, unanticipated growth in base load requirements,

By early 1973, however, it became apparent that the HTPP would have to be modified to provide for the region's power needs beyond 1981. Planned thermal plants had experienced delays, demand had grown faster than had been forecasted, and the capacity for net billing was becoming exhausted. On March 12, 1973, the Acting Secretary of the Interior instructed the BPA Administrator to attempt to work out an appropriate plan for carrying forward the HTPP or some alternative procedure for an assured future power supply in the region.[15]

After extensive consultations, BPA and its customers agreed on December 14, 1973, to a cooperative plan termed "Phase 2" of the Hydro-Thermal Power Program.[16] The basic concept of the HTPP remained unchanged. Under Phase 2 the utilities were to construct eight additional baseload thermal plants[17] with a capacity of 7.56 million kilowatts to meet the region's power needs through 1986. (Additional resources were to be identified later to meet requirements through 1994.) The federal government was to construct facilities for additional peaking capacity, totaling approximately 8.7 million kilowatts, and BPA was to expand its transmission system.[18] BPA would continue to provide such services as transmission of power, reserves, load shaping, sale of power surplus to the needs of thermal project participants, and scheduling of project output on behalf of utility project participants.

In some respects, however, the Phase 2 plan differed from Phase 1. First, net billing was to be eliminated as a financing mechanism for preference customers' share of required new generating resources. The low-cost resources available under Phase 1

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or delay in operation of scheduled new generating facilities.

[13] Under net billing, the share of thermal plant costs of each participating BPA preference customer was to be offset against amounts owed to BPA by the customer under all its obligations to BPA.

[14] The identity of thermal plants planned for Phase 1 has been in a state of flux. The defendants identify the plants which have been or are being constructed under Phase 1 as Centralia, Trojan, Jim Bridger No. 2 and No. 3, Washington Public Power Supply System (WPPSS) No. 1, No. 2, and No. 3, and Pebble Springs No. 1. Of these plants, Centralia and Jim Bridger No. 2 and No. 3 are coal-fired; the remainder are nuclear.

The accuracy of this list is not at all clear. Some of the plants designated by the defendants as Phase 2 projects are scheduled for completion before the plants described as Phase 1 projects. See *Affidavit of Hector J. Durocher*, pp. 3–5.

[15] Letter of March 12, 1973, from Acting Secretary of the Interior John C. Whitaker to Administrator, BPA (Pl. Ex. I–1).

[16] Phase 2 is described in a document dated December 19, 1973, entitled "Hydro-Thermal Program Phase 2", and in a press release issued the following day (Ex. B to defendants' answer).

[17] The document of December 19, 1973, identified four coal-fired and four nuclear plants as Phase 2 projects. The coal-fired plants were Jim Bridger No. 4, Centralia No. 3, and Boardman Coal (now known as Carty Coal) No. 1 and No. 2. The nuclear plants were Sedro Woolley (Skagit No. 1), PP&L Nuclear No. 1, WPPSS No. 4, and PGE Nuclear No. 3.

According to the defendants, the plans for Centralia No. 3, Carty Coal No. 2, PP&L Nuclear No. 1, and PGE Nuclear No. 3 have since been dropped. These projects have been replaced by WPPSS No. 5, Skagit No. 2, and Pebble Springs No. 2 (all nuclear), leaving a total of seven plants identified as Phase 2 projects. See affidavit of Hector J. Durocher, p. 5.

[18] The latter goal has been facilitated by enactment on October 18, 1974, of the Federal Columbia River Transmission System Act, 16 U.S.C. §§ 838 *et seq.* The Act provides a mechanism for financing expansion of the transmission system from revenues and the proceeds of revenue bonds, freeing BPA from reliance upon the appropriations process. 1974 U.S.Code Cong. & Admin.News p. 5819.

through 1983 would be allocated among preference and industrial customers. Preference customers would have to meet increased baseload energy requirements beyond 1983 by participating directly or indirectly in construction of new thermal plants generating higher-cost power. Those not wishing to participate directly could have BPA act as their agent in purchasing power for them. The second major change contemplated under Phase 2 was an increasingly important role for BPA's direct-service industrial customers. In exchange for securing new 20-year contracts, these customers would agree to purchase up to 1,000 megawatts to provide extra reserves for the area (in effect guaranteeing the construction of the equivalent of one new nuclear plant). If the reserves were needed for use by utilities, the power could be withdrawn from the industrial customers under contract provisions giving them a lower grade of power than under Phase 1. To implement these changes, four new types of contracts were to be developed: (1) new 20-year Power Sales Contracts with preference customers, (2) Trust-Agency Agreements with participating preference customers, (3) agreements to provide services to thermal project participants not parties to the Trust-Agency Agreements, and (4) new 20-year Power Sales Contracts with direct-service industrial customers.

After the agreement on Phase 2 was announced in December, 1973, environmental groups and state government officials urged BPA to prepare an EIS on the Hydro-Thermal Power Program.[19] As a result, BPA prepared and submitted to the Council on Environmental Quality (CEQ) on April 1, 1975, a draft EIS entitled "BPA Participation in Regional Interutility Cooperation".[20] The Chairman of the CEQ found the draft EIS, however, to be "a perplexing document . . . inadequate to comply with the requirements of NEPA and the CEQ Guidelines . . . ."[21] The Chairman wrote:

> "In our view, the amalgam of BPA, Interior Department and congressional actions surrounding the development of the Hydro-Thermal Program leaves no doubt that it is a 'major federal action' within the meaning of Section 102(2)(C) of NEPA. 'Federal action' exists when an agency makes a decision which leads to actions by other parties which will affect the quality of the environment. (*SIPI v. AEC*, 5 ERC 1418, 1423 (D.C.Cir.1973)). In addition, as pointed out in its EIS, BPA will be an integral factor in implementation of the program through its transmission, marketing, coordination, reserve power, and peak-load functions. The fact that private utilities and other Federal and state agencies will play an important role in the program does not dismiss BPA from its impact statement responsibilities.
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> . . . . .
>
> ". . . Of particular concern is that the draft contains relatively little detail on the regional program *or* on BPA's participation; that it presents only the most general, unquantified discussion of environmental impacts; and that in some respects it appears to be written as a justification for the BPA role.
>
> "In our view, an appropriate course of action would be to redraft this impact statement to focus specifically on the Hydro-Thermal Program. The most critical components of such an EIS would be a full description of the Program as presently planned, *the* best possible assessment of the *cumulative* environmental impacts, and a discussion of reasonable alternatives. . . ."[22]

BPA has since undertaken the preparation of a revised EIS focused more specifically on the HTPP, to be called "The Role of BPA in Pacific Northwest Power Supply

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[19] See, e. g., Pl. Ex. 1-6, 7, 8, 9, 10, 11, 14, 15, 16; VI-1.

[20] Pl. Ex. V-5.

[21] Letter of May 7, 1975, from Russell W. Peterson to Acting Secretary of the Interior Kent Frizzell (Pl. Ex. I-19), at 3.

[22] *Id.* at 5-6 (emphasis in original).

System, Including Its Participation in the Hydro-Thermal Power Program" (the "Role EIS"). The defendants have informed the court that they intend to file a cross-motion for summary judgment upon completion of the Role EIS. However, they have not yet done so.

This action was commenced on April 17, 1975. After BPA announced its intention to prepare the Role EIS, the plaintiffs sought a voluntary agreement by the defendants to defer any action to implement Phase 2 until completion of the EIS. The defendants refused to agree. Moreover, they have never conceded that an EIS on Phase 2 is required by NEPA. Consequently, the plaintiffs filed their motion for summary judgment.

THE PLAINTIFFS' CLAIMS

The plaintiffs contend that Phase 2 constitutes a proposal for major federal action significantly affecting the quality of the human environment, for which NEPA requires preparation of an EIS.[23] They identify the agreement of December 14, 1973, as the requisite "proposal". They say that BPA's important role in Phase 2 makes that program "major federal action". And they list numerous ways in which the HTPP affects the quality of the human environment.[24] They claim that summary judgment is appropriate because there is no genuine issue as to any material fact.[25] In support of their motion, plaintiffs rely upon the complaint and answer, the defendants' answers and supplemental answers to the plaintiffs' interrogatories, the deposition of Donald P. Hodel, and the affidavit and supplemental affidavit (with exhibits) of John Roger Beers.

The defendants' answer denies these allegations and raises six affirmative defenses: failure to state a claim, lack of standing, lack of subject-matter jurisdiction, prematurity, failure to exhaust administrative remedies, and primary jurisdiction in other state and federal agencies. In response to the motion for summary judgment, the defendants contend that (1) the existence of material fact issues precludes summary judgment and (2) even if summary judgment were appropriate, the plaintiffs are not entitled to relief under NEPA. The defendants have submitted affidavits of eleven witnesses[26] in support of their position.

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[23] Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C), provides that all agencies of the federal government shall

> "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
>
> "(i) the environmental impact of the proposed action,
>
> "(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> "(iii) alternatives to the proposed action,
>
> "(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> "(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

[24] Paragraph 4 of the complaint summarizes some of the effects upon the environment:

> "The significant adverse environmental effects of Phase 2 include, among others, contamination of the air in local areas of Oregon, Washington, Montana and Wyoming due to the emission of hazardous particulates and gases from coal-fired power plants; serious loss of aquatic life in the Columbia, Chehalis and Skagit Rivers due to thermal and chemical pollution from nuclear power plants; increased fish mortality, decreased recreational safety and disruption of commerce on the Columbia River due to increased use of hydro generators for peaking power; the risk of a catastrophic accident and routine release of hazardous radioactive materials at nuclear power plants and their supporting facilities; disruption of wildlife habitat and removal of thousands of acres of land from agricultural and recreational uses due to the construction of transmission lines; and destruction of thousands of acres of other agricultural lands due to the surface mining of coal and uranium."

These and other effects are described in greater detail in paragraphs 28–33 of the complaint and paragraphs 38–45 of the affidavit of John Roger Beers.

[25] In the event summary judgment is denied, plaintiffs seek a preliminary injunction pending trial on the merits.

IS SUMMARY JUDGMENT APPROPRIATE?

The plaintiffs bolster their motion for summary judgment by pointing to my decision of August 26, 1975, in the case of *Port of Astoria* v. *Hodel*, 8 ERC 1156 (D.Or. 1975), appeals docketed, Nos. 75–3465 (Nov. 11, 1975), 75–3621 (Dec. 2, 1975), 75–3699 (Dec. 26, 1975), and 76–1049 (Jan. 12, 1976), 9th Cir. The plaintiffs in *Port of Astoria* claimed that NEPA required BPA to prepare an EIS before executing a Phase 2 contract with one of its direct-service industrial customers, the Alumax Pacific Corporation (Alumax). I held that the BPA power contract enabled the construction of the Alumax plant, with its attendant environmental effects, and thereby rendered BPA's execution of the contract major federal action requiring preparation of an EIS.

More important to the present case, I stated in the *Port of Astoria* opinion that the execution of the contract also constituted major federal action because it was a significant step in implementing Phase 2. *Id.* at 1160. The language of that opinion lends strong support to the plaintiffs' contentions:

> "The Umatilla contract implements a federal policy which BPA calles [*sic*] 'Phase 2 of the Hydro-Thermal Program' (Phase 2).
>
> "From 1968 BPA and publicly and privately owned utilities have co-operated under a generalized policy regarding the power supply in the Pacific Northwest. The original joint effort, called Phase 1, intended to cover the Northwest's power needs through the 1980s. However, unanticipated shortages and construction delays required another long-range plan. This plan, Phase 2, expects to meet the Pacific Northwest's power needs beyond 1981. Industrial Power contracts of the type signed by Alumax are an integral feature of Phase 2, especially the reserves and financing provided by the third quartile provision.
>
> "BPA objects that Phase 2 is not major federal action. BPA contends Phase 2 is merely the continuation of Phase 1—a viable pre-NEPA policy. BPA argues that Congress has granted BPA unimpeded marketing authority separate from NEPA; that Phase 2 is a mere non-obligatory policy with no action required; that BPA plays only a minor role in Phase 2 with no power to demand cooperation; and finally, that the Umatilla contract plays an undeterminable, minimal role in Phase 2 and does not affect the amount of power available in the future.
>
> "BPA's objections lack substance. The industrial contracts—the key feature of Phase 2—are intended to increase BPA's power reserves by 1981 in an amount equal to that produced by a nuclear generating plant. By manipulating the grades of power, BPA has in effect constructed a future nuclear plant. Admittedly, cancelling the Umatilla contract would not provide BPA with additional power to sell, but it would increase BPA's annual reserves in an amount equal to the power used by Eugene, Oregon. Phase 2 is a strong policy in its own right. It enables BPA to avoid costly breaches of contract as the strain on its wholesale reserves becomes more critical. BPA previously tried to withdraw from the Warrenton contract because of its concern with future reserve shortages.
>
> "BPA markets fifty percent of the Pacific Northwest's power. It is physically and practically dominant in Phase 2. By requiring industrial customers to sign contracts with the third quartile provision, BPA ensures the financing of the necessary thermal generating plants for public and private utilities. If Phase 2 is merely a continuation of Phase 1, then the third quartile provision is sufficiently

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[26] George S. Bingham, William E. Bruner, Russell N. Dorran, Hector J. Durocher, Lyman J. Harris, Myron B. Katz, David H. Knight, R. B. Lisbakken, John G. McLeod, J. J. Stein, and Ronald H. Wilkerson.

different to require an EIS. *Cf. Lathan v. Brinegar*, 506 F.2d 677 (9th Cir. 1974); *Jicarilla Apache Tribe of Indians v. Morton*, 471 F.2d 1275 (9th Cir. 1973)." *Id.*

Despite the *Port of Astoria* decision and the evidentiary materials submitted by the plaintiffs in support of their motion, the defendants insist that genuine issues of material fact preclude granting summary judgment. Their memorandum in opposition to the motion lists seven areas of supposed dispute.[27]

I find that no genuine issue exists as to any material fact. Some of the defendants' so-called issues raise the same contentions laid to rest in the *Port of Astoria* case.[28] Others are simply not material to the ultimate question of whether an EIS is required.[29]

The defendants' most substantial argument is that the facts have changed since Phase 2 was conceived in 1973 and that BPA no longer plays the role contemplated for it at that time. Affidavits establish that the financing and construction of Phase 2 thermal plants is proceeding without the direct participation of BPA.[30] The four new types of contracts contemplated under Phase 2[31] have never been finalized or executed. According to BPA's Assistant Administrator for Power Management, the need for the Trust-Agency Agreements with preference customers has been eliminated and no new Power Sales Contracts with direct-service industrial customers will be executed when the present ones expire in the mid-1980s.[32] Finally, possible modifications of various elements of Phase 2 are under consideration.[33]

Undoubtedly, Phase 2 is not static. The substance of the HTPP—and of Phase 2—has remained constant, however, despite the inevitable modifications that have occurred.[34] The ultimate goal remains the planning, construction, and operation of the region's power facilities as if they were under a single ownership. Baseload power will depend increasingly upon thermal generating resources, while peaking power will be provided by hydroelectric resources. The utilities will build the required thermal plants. BPA will provide the necessary peaking capacity and high-voltage transmission grid, along with reserves, load shaping, sale of surplus power, and scheduling of project output.

The changes in Phase 2 alleged by the defendants are in some cases merely cosmetic. For example, although BPA has not yet executed the contemplated agreements to provide services to thermal project participants, it has acceded to the demands for assurance of its preference customers by issuing letters of intent to them.[35] The respects in which Phase 2 has changed significantly do not affect the question of whether NEPA requires preparation of an EIS.

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[27] See Defendants' Statement and Affidavits in Opposition to Plaintiffs' Motion for Summary Judgment and Preliminary Injunction, at pp. 14–16.

[28] The defendants claim, for example, that Phase 2 is not an "agreement" but merely a cooperative plan of development which has never been binding on any party. They also claim that the ability to produce environmental effects rests with the sponsors of thermal projects, not in Phase 2. *Id.* at 14–15.

[29] Thus, it does not matter who prepares load forecasts, what precisely is the subject of the Role EIS now being written, or whether BPA is committed to completing that EIS. *Id.* at 15–16.

[30] See the affidavits of Russell N. Dorran, Lyman J. Harris, David H. Knight, and J. J. Stein.

[31] See page 8, *supra*.

[32] Affidavit of Hector J. Durocher, pp. 8–11.

[33] The Pacific Northwest Regional Commission, a federal-state partnership including the states of Oregon, Washington, and Idaho, has commissioned the Northwest Energy Policy Project to conduct a two-year study identifying and evaluating energy policy choices in the region. See affidavits of William E. Bruner and Myron B. Katz. BPA itself has recently prepared the draft of a "Study Paper for Regional Power Planning" (Pl. Ex. 1–27) which discusses possible methods for financing future thermal plants and assuring long-term power supplies for BPA's direct-service industrial customers. See also Pl. Ex. 1–28.

[34] Indeed, it might be observed that the modifications that have occurred are largely a result of NEPA litigation.

[35] See Exhibits 2 and 3 to the affidavit of Hector J. Durocher.

Finally, although the defendants have raised in their answer the affirmative defenses of failure to state a claim, lack of standing, lack of subject-matter jurisdiction, prematurity, failure to exhaust administrative remedies, and primary jurisdiction in other agencies, they have presented neither argument nor affidavits in support of these defenses. I can perceive no genuine issue of material fact which they present. I therefore turn to the merits of plaintiffs' NEPA claim.

DOES NEPA REQUIRE AN EIS?

[1] Plaintiffs' members live, work, and enjoy recreational pursuits in areas which will be affected by activities contemplated under Phase 2.[36] The plaintiffs unquestionably have standing to raise the issue of whether NEPA requires preparation of an EIS on Phase 2 of the HTPP. See *Sierra Club v. Morton,* 405 U.S. 727, 731–735, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972); *Cady v. Morton,* 527 F.2d 786, 791 (9th Cir. 1975).

[2] The defendants' position is that Phase 2 of the HTPP constitutes neither a "proposal" nor "major federal action" within the meaning of section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C).[37] (They have presented neither evidence nor argument that activities contemplated under Phase 2 will not significantly affect the quality of the human environment.) Their argument is succinctly stated in their answer to plaintiffs' interrogatory No. 32:

> ". . . HTPP overall is not a 'major Federal action significantly affecting the quality of the human environment,' as those terms are used in Section 102(2)(c) [*sic*] of the National Environmental Policy Act. Simply stated, it is clear that the HTPP is not related only to federal action but instead to action within the entire Pacific Northwest. It is not a program in the sense that it requires either action or results, rather it is a concept of 'one utility' in the Pacific Northwest to which all those who participate in the electric energy generation, transmission or utilization can relate when plans are being made for further generation, transmission or utilization. The plans and decisions under this are not made in concert, nor do any of them require consensus. The decisions are those of the generating utility, of the transmission line constructor or the consuming purchaser. There is no necessary interrelationship between the plans to do any of the activities which might be related to HTPP and any other activity which either interconnects or relates to production or consumption of electric energy."

I find this argument totally unacceptable under both the facts and the law.

Assuming for the moment that the requisite "proposal" exists, it is quite clear that Phase 2 of the HTPP constitutes major federal action.

Phase 2 is "major" in both the environmental and economic sense even when only the proposed unilateral actions of BPA are considered. The construction of transmission facilities will require that vast acreages of land be converted from their present agricultural, recreational, and other uses, with accompanying disruption of fish and wildlife habitats. The increasing use of hydroelectric generators to meet peak load will cause large, rapid fluctuations of water levels affecting recreational activities, commerce, and aquatic life. The federal investment in the HTPP is in the billions of dollars.[38]

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[36] See plaintiffs' answer to defendants' interrogatories No. 4 and No. 5.

[37] See note 23, supra, for the text of the statute.

[38] BPA estimated in 1971 that investment in electric power facilities under the HTPP would eventually total $18 billion. Of that sum, approximately one-quarter would come from the federal government ($2.1 billion for hydro facilities and $2.3 billion for transmission facilities). Pl. Ex. II–2, at 20. The defendants are unable

The thermal plants to be constructed under Phase 2 by nonfederal entities are also clearly "major" in terms of their environmental effects. The defendants contend, however, that BPA has nothing to do with the planning, financing, and construction of these plants and that they are not "federal" actions within the meaning of NEPA. This contention ignores a plethora of cases holding that an essentially private project is "federalized" for purposes of NEPA when federal action has enabled the project to come to fruition. See, *e. g.*, *Sierra Club v. Hodel*, 544 F.2d 1036, 1044 (9th Cir. 1976) (BPA contracted to supply power and construct transmission line to magnesium plant); *City of Davis v. Coleman*, 521 F.2d 661, 674–677 (9th Cir. 1975) (construction of freeway interchange would provide access to the area for future industrial development); *National Forest Preservation Group v. Butz*, 485 F.2d 408, 411–412 (9th Cir. 1973) (massive land exchange would allow former national forest lands to be used for Big Sky recreational development); *Port of Astoria v. Hodel*, 8 ERC 1156, 1159–1160 (D.Or.1975) (BPA contracted to supply power to aluminum reduction plant under Phase 2 and to construct transmission line to plant). The defendants have tried mightily to disclaim any responsibility for the Phase 2 thermal plants, but I find their disclaimers unconvincing. BPA plays a pivotal role in the HTPP and in Phase 2. Without federal peaking power and transmission systems and the services performed by BPA, construction of these plants would be inconceivable in the absence of very substantial change.

Having concluded that the actions contemplated under Phase 2 are both "major" and "federal", I must decide whether the requisite "proposal" is present. I find that Phase 2 is such a proposal.

Both parties rely upon a recent Supreme Court case, *Kleppe v. Sierra Club*, 427 U.S. 390, 96 S.Ct. 2718, 49 L.Ed.2d 576 (1976). In that case the Department of the Interior had prepared EISs both on the national coal leasing program as a whole and on individual leases to be executed locally. The plaintiffs, however, contended that NEPA required the preparation of still another EIS covering the Northern Great Plains region. The Supreme Court rejected this contention, finding that no "proposal" for regional action existed. The Court held that NEPA is triggered only when a proposal is made: neither the mere contemplation of action nor the existence of intimately-related projects is sufficient.

The facts in *Kleppe* were strikingly different from those in the case at hand. In *Kleppe* the record was bereft of evidence that any regional plan existed:

> "But there is no evidence in the record of an action or a proposal for an action of regional scope. The District Court, in fact, expressly found that there was no existing or proposed plan or program on the part of the Federal Government for the regional development of the area described in respondents' complaint. It found also that the three studies initiated by the Department in areas either included within or inclusive of respondents' region—that is, the Montana-Wyoming Aqueducts Study, the North Central Power Study, and the NGPRP—were not parts of any plan or program to develop or encourage development of the Northern Great Plains. That court found no evidence that the individual coal development projects undertaken or proposed by private industry and public utilities in that part of the country are integrated into a plan or otherwise interrelated. These findings were not disturbed by the Court of Appeals, and they remain fully supported by the record in this Court.
>
> "Quite apart from the fact that the statutory language requires an impact statement only in the event of a proposed action, respondents' desire for a regional environmental impact statement cannot be met for practical reasons. In the ab-

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to identify with any precision the federal investment allocable to Phase 2; however, transmission facilities alone will cost many millions of dollars. See defendants' answer to plaintiffs' interrogatory No. 15.

sence of a proposal for a regional plan of development, there is nothing that could be the subject of the analysis envisioned by the statute for an impact statement. Section 102(2)(C) requires that an impact statement contain, in essence, a detailed statement of the expected adverse environmental consequences of an action, the resource commitments involved in it, and the alternatives to it. Absent an overall plan for regional development, it is impossible to predict the level of coal-related activity that will occur in [the region identified by respondents], and thus impossible to analyze the environmental consequences and the resource commitments involved in, and the alternatives to, such activity. A regional plan would define fairly precisely the scope and limits of the proposed development of the region. Where no such plan exists, any attempt to produce an impact statement would be little more than a study along the lines of the NGPRP, containing estimates of potential development and attendant environmental consequences. There would be no factual predicate for the production of an environmental impact statement of the type envisioned by NEPA.[14]

"14. In contrast, with both an individual coal-related action *and* the new national coal-leasing program, an agency deals with specific action of known dimensions. With appropriate allowances for the inexactness of all predictive ventures, the agency can analyze the environmental consequences and describe alternatives as envisioned by § 102(2)(C). Of course, since the kind of impact statement required depends upon the kind of ' "federal action" being taken,' *Aberdeen & Rockfish R. Co. v. SCRAP* (*SCRAP II*), 422 U.S. 289, 322, 95 S.Ct. 2336, 2357, 45 L.Ed.2d 191 (1975), the statement on a proposed mining plan or a lease application may bear little resemblance to the statement on the national coal-leasing program. Nevertheless, in each case the bounds of the analysis are defined, which is not the case with coal development in general in [the region identified by respondents]." *Id.* at 400–403, 96 S.Ct. at 2726–2727. (footnotes other than 14 omitted).

In the present case, on the other hand, the record abounds with evidence that the Pacific Northwest is regarded as a distinct region for purposes of electrical power planning. Both Phase 1 and Phase 2 of the HTPP are specific plans for regional development, hammered out after long negotiations and embodied in published documents. Individual projects undertaken by the federal government, by public and private utilities, and by industry are interrelated according to an integrated plan. The HTPP "define[s] fairly precisely the scope and limits of the proposed development of the region", given "the inexactness of all predictive ventures". *Id.* at 402, 96 S.Ct. at 2727. Indeed, the HTPP can be compared to the national program in *Kleppe*, of which the Court said:

> "[T]he federal petitioners agreed at oral argument that § 102(2)(C) required the Coal Programmatic EIS that was prepared in tandem with the new national coal-leasing program and included as part of the final report on the proposal for adoption of that program. Tr. of Oral Arg. 9. Their admission is well made, for the new leasing program is a coherent plan of national scope, and its adoption surely has significant environmental consequences." *Id.* at 400, 96 S.Ct. at 2726.

The Ninth Circuit cited *Kleppe* in a recent case involving BPA, *Sierra Club v. Hodel*, 544 F.2d 1036 (9th Cir. 1976). The plaintiffs in that case contended that an EIS must be prepared before BPA entered into a contract to supply electrical power to an aluminum reduction plant. The plaintiffs' chief argument was that the plant's great power requirements would be a drain on the hydroelectric power available in the region. They alleged that an EIS must be prepared to show the interrelationship between the power allotment to the aluminum plant and power allotments to other users. In citing *Kleppe*, the court said:

> "In the case now before us, although there is a general 'Pacific Northwest' region to which Bonneville supplies a great amount of hydroelectric power, *there is no record showing of a master plan for development of the region.* The Bonneville Project simply provides authority to the Administrator to market power not necessary to operate the project and the navigation facilities employed in connec-

tion therewith. 16 U.S.C. § 832. Here, as in *Kleppe v. Sierra Club, supra, there is reference to other contracts with industry but not on a regionally organized basis.* Although power is to be sold for the benefit of the public and particularly of domestic and rural consumers with preference and priority to public bodies and cooperatives, 16 U.S.C. § 832c, there is no regional plan of development either by geographical area, by customer, or by percentage of total power generation capacity. We affirm the judgment of the district court in its decision that no environmental impact statement was required in order to show the energy effect of this contract upon all other contracts or energy users of the Bonneville project." *Id.* at 1040–1041 (emphasis added).

Sierra Club v. Hodel cannot help the defendants. The question raised in *Sierra Club v. Hodel* was different from that raised in the case at hand. In any event, the record in this case establishes beyond a doubt that a master plan for regional development does exist.

It is not enough that the defendants or other federal officials have faithfully prepared an EIS for each individual transmission facility and hydroelectric project added to the Federal Columbia River Power System since NEPA was enacted, nor that they will continue to do so. The Guidelines for the Preparation of Environmental Impact Statements promulgated by the Council on Environmental Quality (CEQ Guidelines) point out the importance of "programmatic" EISs which evaluate the cumulative impacts of a number of separate, but related, actions:

> "(a) The statutory clause 'major Federal actions significantly affecting the quality of the human environment' is to be construed by agencies with a view to the overall, cumulative impact of the action proposed, related Federal actions and projects in the area, and further actions contemplated. Such actions may be localized in their impact, but if there is potential that the environment may be significantly affected, the statement is to be prepared. . . . In considering what constitutes major action significantly affecting the environment, agencies should bear in mind that the effect of many Federal decisions about a project or complex of projects can be individually limited but cumulatively considerable. This can occur when one or more agencies over a period of years puts into a project individually minor but collectively major resources, when one decision involving a limited amount of money is a precedent for action in much larger cases or represents a decision in principle about a future major course of action, or when several Government agencies individually make decisions about partial aspects of a major action. In all such cases, an environmental statement should be prepared if it is reasonable to anticipate a cumulatively significant impact on the environment from Federal action." CEQ Guidelines, 40 C.F.R. § 1500.6(a) (1976).
>
> "(d)(1) Agencies should give careful attention to identifying and defining the purpose and scope of the action which would most appropriately serve as the subject of the statement. In many cases, broad program statements will be required in order to assess the environmental effects of a number of individual actions on a given geographical area (e. g., coal leases), or environmental impacts that are generic or common to a series of agency actions (e. g., maintenance or waste handling practices), or the overall impact of a large-scale program or chain of contemplated projects (e. g., major lengths of highway as opposed to small segments). Subsequent statements on major individual actions will be necessary where such actions have significant environmental impacts not adequately evaluated in the program statement." *Id.*, § 1500.6(d)(1).

The Supreme Court acknowledged in *Kleppe* that a comprehensive EIS is sometimes required:

> "We begin by stating our general agreement with respondents' basic premise that § 102(2)(C) may require a comprehensive impact statement in cer-

> tain situations where several proposed actions are pending at the same time. . . A comprehensive impact statement may be necessary in some cases for an agency to meet [its duty to assure consideration of the environmental impact of its actions in decisionmaking]. Thus, when several proposals for coal-related actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action." *Kleppe v. Sierra Club, supra*, 427 U.S. at 409–410, 96 S.Ct. at 2730 (footnotes omitted).

Cf. *Cady v. Morton*, 527 F.2d 786, 794–795 (9th Cir. 1975); *Scientists' Institute for Public Information, Inc. v. AEC*, 156 U.S. App.D.C. 895, 481 F.2d 1079 (1973). Only a programmatic EIS focusing on Phase 2 as a whole will satisfy the requirements of NEPA.[39]

No one questions that the Pacific Northwest is in the throes of an energy crisis. Additional sources of energy must be found as soon as possible. BPA and the area's public and private utilities are to be commended for their diligence and foresight in seeking a solution to this problem. The delays inherent in complying with NEPA are regrettable, but Congress has determined that certain procedural requirements must be satisfied to achieve goals believed to be important. The judicial function is to see that valid laws enacted by the legislative branch are carried out.

In view of the history of this litigation, one more observation should be made in order to avoid any future misunderstanding about the import of this opinion. I do not regard the label "Phase 2" as some sort of talisman crucial to the plaintiffs' case. Phase 2 is not now and never has been a rigid, fixed plan. Thermal plant locations are likely to change, new methods for financing their construction may be devised, and a way may yet be found to provide BPA's direct-service industrial customers with low-cost power after their present contracts expire. So long as these modifications do not change the basic concept of the HTPP, however, a programmatic EIS must be completed before BPA undertakes any further action to implement Phase 2.

RELIEF

The plaintiffs are entitled to summary judgment in their favor and to entry of a judgment declaring that the defendants are required by NEPA to prepare an EIS on Phase 2 of the Hydro-Thermal Power Program.

The question of what form of injunctive relief is appropriate is more problematical. I do not wish to hinder the vigorous pursuit of ways to satisfy the region's electrical power needs. I also have no intention of interjecting this court into the daily operations of an entity such as the Bonneville Power Administration. Finally, isolation of Phase 2 from Phase 1 for purposes of injunctive relief presents problems difficult to resolve.

Before entry of judgment, therefore, I shall direct the Clerk to set a conference with counsel regarding the need for and the proper form of injunctive relief. The parties are urged to make every possible agreement to reach a voluntary accord. If they cannot agree on these questions, counsel should submit to the court prior to the conference any written materials, including proposed forms of judgment, which they believe may be helpful. After judgment has been entered, this court shall retain jurisdiction of this proceeding until a final EIS complying with NEPA has been filed.

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[39] Plaintiffs' counsel stated during oral argument (Tr. 5–6) that a programmatic EIS on the HTPP was probably required even before Phase 2 was announced. The Ninth Circuit has frequently noted that NEPA applies to federal projects that were ongoing at the time NEPA was enacted, so long as significant federal action remained to be taken. See, e.g., *Cady v. Morton, supra*, 527 F.2d at 794; *Robinswood Community Club v. Volpe*, 506 F.2d 1366, 1369–70 (9th Cir. 1974); *Lathan v. Brinegar*, 506 F.2d 677, 687–689 (9 Cir. 1974) (en banc); *Life of the Land v. Brinegar*, 485 F.2d 460, 466 n.7 (9th Cir. 1973), cert. denied, 416 U.S. 961, 94 S.Ct. 1979, 40 L.Ed.2d 312 (1974). Plaintiffs do not seek to halt Phase 1 projects, however, but only to prevent the defendants from taking any actions to implement Phase 2 before completion of an EIS.

NATURAL RESOURCES DEFENSE COUNCIL, INC., et al., Appellees,

v.

Sterling MUNRO, in his official capacity as Administrator of the Bonneville Power Administration, et al., Appellants.

No. 78-2014.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted June 3, 1980.
Decided Aug. 25, 1980.

Appeal was taken from judgment of the United States District Court for the District of Oregon, Skopil, J., 435 F.Supp. 590, holding that environmental impact statement was required prior to taking action with respect to phase two of long-range cooperative plan formulated by the Bonneville Power Administration and others to meet forecasted energy needs of the Pacific Northwest, and enjoining action to implement phase two prior to filing of appropriate EIS. The Court of Appeals, Schroeder, Circuit Judge, held that: (1) environmental impact statement was required, and (2) if specific questions arose as to scope of injunction or needs for possible modification, district court should assess them.

Affirmed.

1. Health and Environment ⚷25.10(2)

Environmental impact statement was required with respect to phase two of long-range cooperative plan formulated by Bonneville Power Administration and others to meet forecasted energy needs of the Pacific Northwest. National Environmental Policy Act of 1969, §§ 1-209, 42 U.S.C.A. §§ 4321-4347.

2. Health and Environment ⚷25.15(3)

If specific questions arose as to scope of injunction pending completion of environmental impact statement or needs for possible modification, they should be addressed to district court. Fed.Rules Civ.Proc. Rule 60(b)(5), 28 U.S.C.A.

Thomas C. Lee, Asst. U. S. Atty., Portland, Or., for appellants.

John Roger Beers, San Francisco, Cal., for appellees.

Appeal from the United States District Court for the District of Oregon.

Before KENNEDY and SCHROEDER, Circuit Judges and TANNER*, District Judge.

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* Honorable Jack E. Tanner, United States District Judge for the Western District of Washington, sitting by designation.

SCHROEDER, Circuit Judge:

This is an action by six environmental groups for declaratory and injunctive relief under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–47. Plaintiffs claimed below that the Bonneville Power Administration (BPA) could not take any action with respect to "Phase 2" of the Hydro-Thermal Power Program until it had filed an environmental impact statement (EIS). The program was a long range cooperative plan formulated by BPA and others to meet the forecasted energy needs of the Pacific Northwest. The district court held that an EIS was required and issued an injunction prohibiting the administrator of the BPA and the Secretary of the Interior from taking any action to implement Phase 2 or "equivalent or substitute arrangements or programs subsequent to Phase 1" until it had filed an appropriate EIS. The EIS is now being prepared.

[1] The facts are reported in the district court's thorough opinion, 435 F.Supp. 590 (D.Or.1977). The major issue raised on appeal is whether Phase 2 requires an EIS. The identical issue, however, was decided in *Port of Astoria v. Hodel*, 595 F.2d 467 (9th Cir. 1979), where we held that an EIS was required. Appellants concede that *Port of Astoria* requires us to affirm the district court on this issue.

[2] The only issue which we must decide is whether the injunction prevents the BPA from taking routine actions to supply its customers with power and for which no EIS is required. The BPA has been unable to cite any specific examples of such improper inhibitions now caused by the injunction.

The district court's injunction was prepared after consultation among all the parties. It spells out in considerable detail what actions BPA may take and what are enjoined. The district court retained jurisdiction until completion of the EIS, and the injunction has been modified at least once since it was issued to accommodate BPA's needs.

If other specific questions arise as to the scope of the injunction or need for possible modification, the district court will be able to assess them, and its decisions will be subject to review by this Court. *Cf.* Fed.R.Civ.P. 60(b)(5); 7 Moore's Federal Practice ¶ 60.30[3], at 431 & n.13 (1979). BPA has not in this appeal shown any justification for overturning the injunction.

Affirmed.

APPENDIX III

Responses of Ms. Hesse to Additional Questions

Department of Energy
Washington, D.C. 20585

December 6, 1982

Honorable James A. McClure
United States Senate
Washington, D.C. 20510

Dear Senator McClure:

Enclosed are responses to the questions submitted by the Honorable Henry M. Jackson following the December 1, 1982, confirmation hearing of Martha O. Hesse, nominated to be Assistant Secretary for Management and Administration in the Department of Energy, before the Senate Energy and Natural Resources Committee.

Copies of the responses have been sent to the Honorable Henry M. Jackson.

If you have any questions, please call Cathy Carey or Tom Pretorius of my staff on 252-4277. They will be happy to assist you.

Sincerely,

Thomas H. Pretorius
for Robert G. Rabben
Assistant General Counsel
for Legislation

Enclosure

RESPONSE TO SENATOR JACKSON

Q. In your position as Executive Director of the President's Task Force on Management Reform, to what extent did you work on the proposed reorganization of the DOE?

A. From the time I assumed leadership of the President's Task Force on Management Reform, I was not involved in activities related to the reorganization of the DOE. The Task Force on Management Reform was involved in developing a long-term plan to improve the management and administrative processes and systems of the government. We specifically excluded from our area of review any reorganization efforts.

While Associate Deputy Secretary of the Department of Commerce, I was involved in the reorganization effort, as a member of the Steering Group and as coordinator of the Working Groups. The structure and process for the energy reorganization was:

- o White House Policy Team -- appointed by the President to oversee energy reorganization. It provided all policy guidance, assigned responsibilities, and approved major initiatives and deadlines. The team was chaired by Presidential Counselor Meese and included the Secretaries of Energy, Commerce, Defense, and Interior as well as the head of the White House Office of Policy Development.
- o Steering Group -- coordinated and directed the activities of multiple working groups; reviewed, approved, or assured executive approval of their products;

and related to Congressional interests on overall reorganization matters. This group was chaired by the OMB Deputy Director and the DOE Deputy Secretary, and included some 13 participants at the Deputy Secretary, Under Secretary, and Assistant Secretary levels from interested agencies and the Executive Office. The Chairman provided staff to support the Steering Group as well as to coordinate Working Group efforts.

- Working Groups -- six crosscutting working groups (Resources, Congressional Liaison, Public Affairs, Legislation/Legal, and Policy) provided liaison with external groups, provided data necessary for organization integration activities and advised the Steering Group. An organization integration working group developed organization and management concepts and plans for receiving agencies. In all, more than 50 people from 10 agencies participated in the working group effort.
- OMB and OPD -- served on the Steering Group and participated selectively on various working groups. These offices also reviewed and approved for the Administration the final products of the working groups that were accepted by the Steering Group.

Q. Were you responsible for the estimates of cost savings and personnel reduction that would supposedly accrue from DOE reorganization?

A. As coordinator of the reorganization effort at the Department of Commerce, I did review and forward to the Deputy Secretary the staff analysis of potential cost savings goals.

Q. How do you explain the substantial changes in these estimates that occurred between the introduction of the initial dismantlement proposal and the current one?

A. The initial cost savings were viewed as potential goals to be achieved by the reorganization. We knew these goals would be subject to several changes as the method of reorganization was negotiated with the Congress. We also surfaced these goals as a point of departure for further analysis. While the DOE was fully involved in the original creation of our estimates, we knew the estimates would be subject to further subsequent review by all of the components of DOE. When we received revised suggestions from the Department of Energy on what they felt savings would be, the estimates were changed. These savings estimates have become more precise through this process which was our goal when we proposed them. However, even these goals are subject to the final disposition by the Congress of the proposed new organizational structure.

APPENDIX IV

Additional Material Submitted for the Record

ALLIED

Allied Corporation
Suite 700
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 296-3980

James S. Rubin

November 30, 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
NOV 30 1982
[illegible]
WASHINGTON, D.C. 20510

The Honorable James A. McClure
United States Senate
3121 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

You will shortly be considering the nomination of Mr. Donald Hodel as Secretary of Energy. Having worked with Secretary Hodel in the past, I can assure you that he has demonstrated a fairness and understanding in dealing with very difficult energy matters and is deserving of your support.

In addition, I am proud to say that I have had the opportunity to know Ms. Martha Hesse, nominee for Assistant Secretary of Energy, both professionally and personally. Ms. Hesse has both extensive managerial expertise and a unique capacity for understanding complex substantive matters, leading to effective implementation of solutions thereof. I know her to be a bright, capable, and honest person; and I urge your support of Ms. Hesse for this important post.

Sincerely,

James S R

James S. Rubin
Director, Legislative and
Regulatory Affairs

JSR:cjd

AABE

American
Association of
Blacks in
Energy

915 Fifteenth Street, N.W.
Suite 600

Washington, D.C. 20005
202-737-1359

December 7, 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 7 1982
WASHINGTON, D.C. 20510

The Honorable James A. McClu[illegible]
Chairman
Senate Committee on Energy [illegible]
Natural Resources
3104 Dirksen
Washington, D.C. 20510

Dear Mr. Chairman:

The purpose of this letter is to express the interest of the American Association of Blacks in Energy (AABE) in your committee's confirmation proceedings on the nomination of Donald P. Hodel to be Secretary of Energy.

AABE has pursued and promoted the development of a balanced national energy policy to serve the needs and demands of all Americans. Mr. Hodel's presentations during last week's confirmation hearing indicate that he understands and appreciates the divergent pressures that bear upon our national energy resources and that he is sensitive to the concerns of those who believe the development of these resources must proceed in a manner consistent with our interest on a livable environment.

Combined with what we have learned about his experience and background in the energy field, approval of Mr. Hodel's nomination appears to be prudent and appropriate. We in the AABE share the concerns expressed by many people to ensure environmental safeguards. Mr. Hodel's promise during his confirmation hearing to attempt to pursue "a more balanced energy policy" provides a clue to what we hope promises to be an enlightened national energy program to be adopted by the Department of Energy under Mr. Hodel's stewardship.

Based upon our knowledge of his experience and background we endorse Mr. Hodel's nomination.

Sincerely,

Robert E. Bates, Jr.

Robert E. Bates, Jr.
Chairman

Officers

Robert E. Bates, Jr.	Luddy Hayden	Edgar H. Twine	Owen H. Davis	Melvin S. Hodges	Jeri L. Anderson	Sheila Jackson-Lee
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DEC 1 1982

AMERICAN PUBLIC POWER ASSOCIATION
2301 M STREET, NW WASHINGTON, DC 20037 • 202/775-8300

PUBLIC POWER 1882-1982
A CENTURY OF SERVICE

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San Antonio, Texas
WILLIAM C. WALBRIDGE
Sacramento Municipal Utility District
Sacramento, California
ROBERT C. YOUNG
Burlington, Vermont

Official Committee File

December 1, 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
WASHINGTON, D.C. 20510

Senator James A. McClure
Chairman, Senate Energy Committee
3121 Dirksen Senate Office Bldg.
Washington, D. C. 20510

Dear Senator McClure:

The American Public Power Association has consistently maintained a policy of not officially endorsing or opposing nominees for various Federal positions. However, on a personal basis, I would like to indicate my endorsement of the appointment of Don Hodel as Secretary of the Department of Energy.

I have known Mr. Hodel since he was associated with Bonneville Power Administration, first as Deputy Administrator from 1969-1972, and subsequently as Administrator from 1972-1977. During this period I met with him on a number of occasions, and I also observed his work closely in my capacity as Executive Director of the American Public Power Association, which represents most of the municipally owned electric utilities and public utility districts of the Pacific Northwest. Although I did not necessarily agree with all of his decisions, I found Mr. Hodel to be an excellent administrator, highly intelligent, a person of integrity, straightforward in expressing his views, and fair minded.

After Mr. Hodel left the Bonneville Power Administration he became President of the National Electric Reliability Council, and again I had occasion to work closely with him. I found him to be well informed on electric utility industry problems, objective and an excellent leader of that organization.

I believe that Mr. Hodel's previous experience and his personal character make him well qualified for the position of Secretary of the Department of Energy.

Sincerely,

Alex Radin

AR:jh

American Recreation Coalition

Dedicated to the protection and enhancement of every citizen's right to pursue health and happiness through leisure-time activities.

December 1, 1982

The Honorable James A. McClure
Chairman
Committee on Energy and Natural
  Resources
United States Senate
Washington, D. C. 20510

Dear Senator McClure:

We are writing to express our support for the nomination of Donald T. Hodel to serve the United States as Secretary of Energy. Our nation's energy policies are of fundamental concern to the recreation community since energy is used in most leisure pursuits directly or in travel to and from activity sites.

Actions of past Administrations on energy matters too often have reflected a misunderstanding of the importance of recreation to the American economy and to our quality of life. The Carter Administration, for example, proposed a ban on weekend recreational boating in 1980 as a standby energy conservation measure.

Our contacts with Secretary Hodel have convinced us that he understands the importance of recreation and the painful consequences of governmental attempts to regulate end uses of petroleum.

Finally, Secretary Hodel has earned our respect as a talented administrator, a skill greatly needed at the Department of Energy. He has shown us a willingness to consider and an ability to comprehend the many sides of complex public issues.

Suite 700 • 1901 L Street, NW • Washington, D.C. 20036 • (202) 466-6870

For these reasons, the American Recreation Coalition urges speedy confirmation of Don Hodel as Secretary of Energy. Those ARC member organizations listed below have specifically asked that their support for this nomination be expressed to you.

Sincerely,

Derrick A. Crandall
President

DAC/pms
Enclosure

American Horse Council

American Motorcyclist Association

Boat Owners Association of the United States

International Snowmobile Industry Association

Kampgrounds Owners Association

Marine Retailers Association of America

NASCAR

National Campers and Hikers Association

National Campground Owners Association

National Club Association

National Forest Recreation Association

National Marine Manufacturers Association

National Spa and Pool Institute

National Tour Association

Recreation Vehicle Industry Association

United States Ski Association

American Recreation Coalition

Dedicated to the protection and enhancement of every citizen's right to pursue health and happiness through leisure-time activities.

AMERICAN RECREATION COALITION MEMBERSHIP

American Association for Leisure and Recreation
American Camping Association
American Horse Council
American Hotel and Motel Association
American Land Development Association
American Motorcyclist Association
American Power Boat Association
American Recreational Equipment Association
American Youth Hostels, Inc.
Archery Range and Retailers Organization
Association of Community Travel Clubs
Boat Owners Association of the United States
Boating Trades Association of Texas
Champion Fleet Owners Association
Coachmen Industries, Inc.
Colorado Campground Association
Community Resource and Research Center
Conference of National Park Concessioners
Dometic Sales Corporation
Eastern Professional River Outfitters
Experimental Aircraft Association
Family Motor Coach Association
Federation of Outdoor Recreationists
Fleetwood Enterprises, Inc.
Foremost Insurance Company
Good Sam Club
Hehr International Inc.
Holland Motor Homes, Inc.
Institute for Career and Leisure Development
International Association of Amusement Parks and Attractions
International Kart Federation
International Snowmobile Council
International Snowmobile Industry Association
Intra-South Publications, Inc.
Jayco, Inc.
Kampground Owners Association
Kampgrounds of America
Komfort Industries, Inc.
Leisure Systems, Inc.
Marine Retailers Association of America
Maryland Association of Campgrounds
Michigan Boating Industries Association
Michigan Mobile Home/Recreation Vehicle Institute
Motorcycle Industry Council
Motorhome Travelers Association
National Association of Intercollegiate Athletics
National Association of Property Owners
National Campers and Hikers Association
National Campground Owners Association
National Club Association
National Employee Services and Recreation Association
National Forest Recreation Association
National Hot Rod Association
National Marina Association
National Marine Manufacturers Association
National Motorsport Committee
National Outdoor Coalition
National Spa and Pool Institute
National Tour Brokers Association
North American Family Campers
Outdoor Resorts of America, Inc.
Photographic Society of America, Inc.
Pony Baseball, Inc.
Recreation Vehicle Club Directors Association
Recreation Vehicle Dealers Association
Recreation Vehicle Industry Association
Roller Skating Rink Operators Association
Southern California Loners on Wheels
Southern California Marine Association
Special Recreation, Inc.
Specialty Equipment Market Association
Sporting Goods Business Magazine
Texas Recreational Vehicle Association
United Bus Owners of America
United Four Wheel Drive Associations
United Promotions, Inc.
United States of America Field Hockey
United States Ski Association
Wally Byam Caravan Club International
Warehouse Distributors Association for Leisure and Mobile Products
YWCA National Board

Suite 700 • 1901 L Street, NW • Washington, D.C. 20036 • (202) 466-6870

American Recreation Coalition

Dedicated to the protection and enhancement of every citizen's right to pursue health and happiness through leisure-time activities.

December 2, 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
WASHINGTON, D.C.

The Honorable James A. McClure
Chairman
Committee on Energy and Natural
Resources
United States Senate
Washington, D. C. 20510

Dear Senator McClure:

Yesterday, we communicated to you specific endorsements of Donald Hodel to serve as Secretary of Energy by seventeen key recreation-related organizations. Subsequent to that letter, two additional ARC members have asked that we inform you of their support for this nomination:

- Conference of National Park Concessioners
- Recreation Vehicle Dealers Association

We ask that the views of these organizations be considered in deliberations by the Committee on Energy and Natural Resources on the nomination.

Sincerely,

Derrick A. Crandall
President

DAC/pms

Suite 700 • 1901 L Street, NW • Washington, D.C. 20036 • (202) 466-6870

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MIDDLETOWN, VA. 22645

Western Union Mailgram

4-0362118341 12/07/82 ICS IPMMTZZ CSP WSHB
2024638635 MGM TDMT WASHINGTON DC 52 12-07 0256P EST

SENATOR JAMES MCCLURE
SENATE OFFICE BLDG
WASHINGTON DC 20510

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES DEC 8 1982

RECEIVED
DEC 9 1982
[illegible]
WASHINGTON, D.C. 20510

I WOULD LIKE TO OFFER MY ENDORSEMENT OF DONALD P HODEL AS SECRETARY OF ENERGY I FEEL HE HAS THE BASIC UNDERSTANDING OF THE GOVERNMENTS TRUST RESPONSIBILITY TO TRIBES AND WOULD MAKE AN EXCELLENT SECRETARY
SINCERELY
LADONNA HARRIS PRESIDENT AMERICANS FOR INDIAN OPPORTUNITY

14:58 EST

MGMCOMP

ASF
American Ski Federation

American Ski Federation
499 South Capitol Street S.W.
Suite 406
Washington, D.C. 20003

202/484-6260

Representing the Interest of American Skiing

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 1 1982
WASHINGTON, D.C. 20510

November 29, 1982

The Honorable James McClure
Chairman
Committee on Energy and Natural Resources
Room 3106 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator McClure:

The American Ski Federation, the umbrella organization representing the entire ski industry, respectfully requests your support of Donald P. Hodel as Secretary of Energy when he appears before your committee this week.

The ski industry had the opportunity to work with Mr. Hodel during his tenure as Under Secretary of the Department of the Interior. We found him to be an extremely knowledgeable individual, who can successfully resolve complex and sensitive issues. These qualities make him an excellent choice to lead the Energy Department.

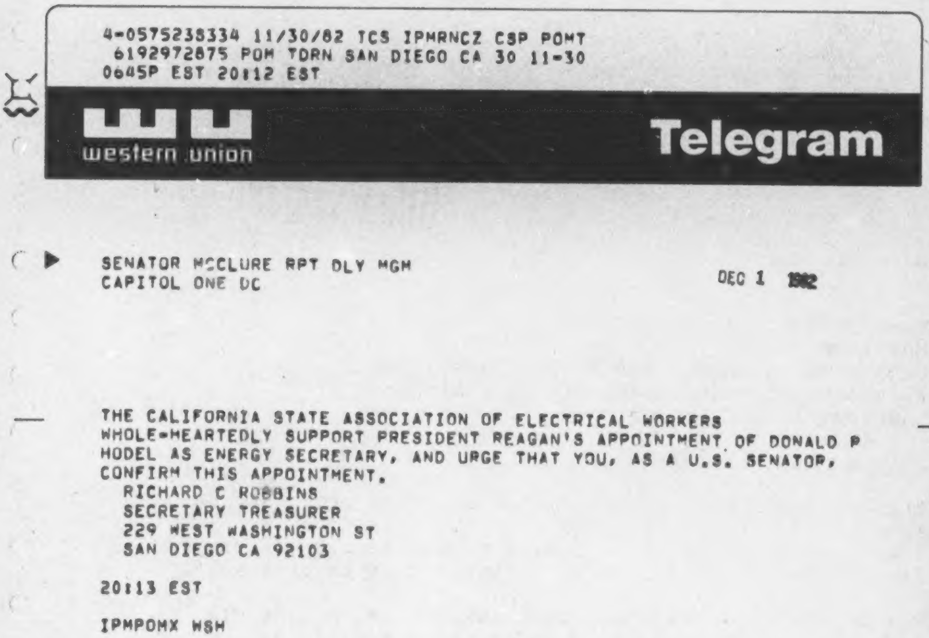
The ski industry has had a continuing strong interest in national energy policy and the need for effective, balanced conservation and development of our country's energy resources. We applaud Mr. Hodel's eagerness to implement sound energy policy and his willingness to listen to wide-ranging views and concerns about energy issues.

Our country would be fortunate to have a man of the calibre of Donald P. Hodel as Secretary of Energy. Again, we urge your support of his nomination.

Sincerely,

Joseph T. Prendergast
President

JTP:lee



4-0575238334 11/30/82 TCS IPMRNCZ CSP POMT
6192972875 POM TDRN SAN DIEGO CA 30 11-30
0645P EST 20:12 EST

western union
Telegram

SENATOR MCCLURE RPT DLY MGM
CAPITOL ONE DC

DEC 1 1982

THE CALIFORNIA STATE ASSOCIATION OF ELECTRICAL WORKERS WHOLE-HEARTEDLY SUPPORT PRESIDENT REAGAN'S APPOINTMENT OF DONALD P HODEL AS ENERGY SECRETARY, AND URGE THAT YOU, AS A U.S. SENATOR, CONFIRM THIS APPOINTMENT.

RICHARD C ROBBINS
SECRETARY TREASURER
229 WEST WASHINGTON ST
SAN DIEGO CA 92103

20:13 EST

IPMPOMX WSH

4-0627985333 11/29/82 ICS IPMRNCZ CSP POMT
4153263833 TDRN PALO ALTO CA 193 11-29
0905P EST 21:04 EST

western union

Telegram

JAMES A MCCLURE CHAIRMAN
ENERGY & NATURAL RESOURCES COMMITTEE, ASAP, DLR
3104 DIRKSON SENATE OFFICE BLDG
WASHINGTON DC 20510

NOV 30 1982

REGARDING CONFIRMATION HEARINGS FOR SECRETARY DESIGNATE HODEL
IN THE COURSE OF MY DUTIES AS CHAIRMAN OF CALIFORNIA STATE PARK AND RECREATION COMMISSION, I HAD OCCASION TO MEET WITH UNDER SECRETARY HODEL REGARDING A GREAT CONCERN TO CALIFORNIANS--THE QUESTION OF OFF-SHORE OIL DRILLING AND THE IMPACT ON OUR NATURAL RESOURCES, PARTICULARLY THE FISH AND OTHER MARINE LIFE, HARBORS, TRANSPORATION CORRIDORS AND RECREATIONAL VALUES OF THE STATE OF CALIFORNIA'S COASTLINE,
ALTHOUGH WE MIGHT DIFFER ON SOME SUBSTANTIVE ISSUES I FOUND THE DIALOGUE TO BE CONSTRUCTIVE. IN FACT, MR HODEL WAS RECEPTIVE TO A NEW CONCEPT WHICH HAD NOT YET BEEN PROPOSED FOR HIS CONSIDERATION, E.G. THE POSSIBILITY OF RETAINING SOME OF THE DISCOVERED OFF-SHORE OIL TO BE INVENTORIED FOR NATIONAL DEFENSE OR NATIONAL EMERGENCY PURPOSES.
ON THE BASIS OF MY EXPERIENCE WITH MR DONALD HODEL, I BELIEVE THAT HE SHOULD BE CONFIRMED AS THE NEW SECRETARY OF ENERGY. I BELIEVE THAT HE IS KNOWLEDGEABLE AND HAS EXPERIENCE PROFESIONALLY FOR THIS IMPORTANT POSITION. BECAUSE OF HIS SPECIAL KNOWLEDGE OF THE WESTERN STATES AND THEIR RESOURCES, HE SHOULD BE ABLE TO DEAL WITH THE ENERGY QUESTIONS WHICH ARE OF CONCERN TO ALL THE CITIZENS OF OUR COUNTRY.

SINCERELY,
ROBERT TRENT JONES, JR.
CHAIRMAN
CALIFORNIA STATE PARK & RECREATION COMMISSION

21:04 EST

IPMPOMX WSH

western union **Telegram**

NAB034(1726)(1-018577C334)PD 11/30/82 1725
ICS IPMWDWA WSH
07038 WASHINGTON DC 64 11-30 511P EST
PMS THE HONORABLE JAMES MCCLURE, CHMN, DLR, DLR BEFORE 10 AM 12-01
ENERGY AND NATURAL RESOURCES COMMITTEE
U S SENATE
CAPITOL HILL DC 20510

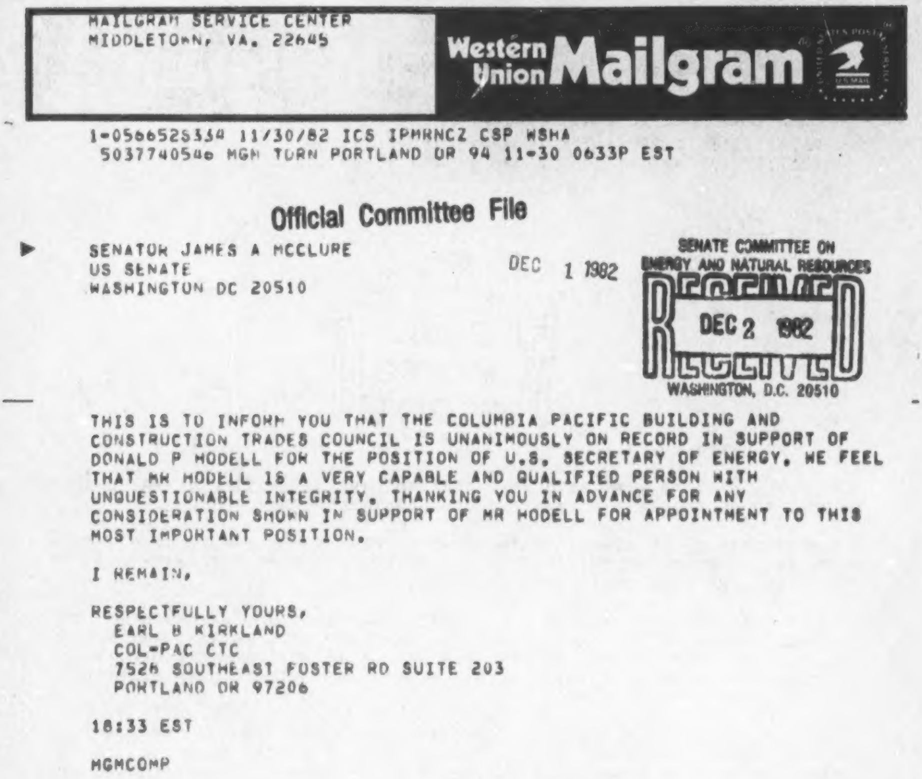
DEC 1 1982

DEAR JIM:

ON BEHALF OVER 244,000 MEMBERS OF U.S. CHAMBER OF COMMERCE, I URGE CONFIRMATION OF DONALD HODEL AS SECRETARY OF ENERGY.
MR. HODEL IS HIGHLY QUALIFIED FOR THIS RESPONSIBILITY.
HE OFFERS UNIQUE, DISTINGUISHED BACKGROUND IN PUBLIC AND PRIVATE SECTORS. HE WILL BRING WITH HIM STRONG MANAGERIAL SKILLS AND SOUND KNOWLEDGE OF ENERGY ISSUES. WE ENTHUSIASTICALLY ENDORSE NIMINATION.

RICHARD L LESHER PRESIDENT
CHAMBER OF COMMERCE OF THE U S WASHINGTON DC 20062

WU 1201-SF (R5-69)



MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645

Western Union Mailgram

1-0566528334 11/30/82 ICS IPMRNCZ CSP WSHA
5037740546 MGM TDRN PORTLAND OR 94 11-30 0633P EST

Official Committee File

SENATOR JAMES A MCCLURE
US SENATE
WASHINGTON DC 20510

DEC 1 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
WASHINGTON, D.C. 20510

THIS IS TO INFORM YOU THAT THE COLUMBIA PACIFIC BUILDING AND CONSTRUCTION TRADES COUNCIL IS UNANIMOUSLY ON RECORD IN SUPPORT OF DONALD P HODELL FOR THE POSITION OF U.S. SECRETARY OF ENERGY. WE FEEL THAT MR HODELL IS A VERY CAPABLE AND QUALIFIED PERSON WITH UNQUESTIONABLE INTEGRITY. THANKING YOU IN ADVANCE FOR ANY CONSIDERATION SHOWN IN SUPPORT OF MR HODELL FOR APPOINTMENT TO THIS MOST IMPORTANT POSITION.

I REMAIN,

RESPECTFULLY YOURS,
EARL B KIRKLAND
COL-PAC CTC
7526 SOUTHEAST FOSTER RD SUITE 203
PORTLAND OR 97206

18:33 EST

MGMCOMP

COLVILLE CONFEDERATED TRIBES A
PO BOX 150
NESPELEM WA 99155

Western Union Mailgram

4-0335388333 11/29/82 ICS IPMMTZZ CSP WSHB
5096332781 MGM TDMT COULEE DAM WA 237 11-29 1130A PST

NOV 3 0 1982

THE HONORABLE JAMES A MCCLURE CHAIRMAN
THE SENATE COMMITTEE ON ENERGY AND NATURAL
RESOURCES 3106 DIRKSEN SENATE OFFICE BLDG
WASHINGTON DC 20510

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
NOV 30 1982
WASHINGTON, D.C. 20510

DEAR MR CHAIRMAN:

WE WOULD LIKE TO EXPRESS OUR SUPPORT FOR THE NOMINATION OF MR DONALD HODEL TO BE THE NEXT DEPARTMENT OF ENERGY SECRETARY.

OUR EXPERIENCE IN WORKING WITH MR HODEL DURING HIS TENURE WITH THE BONNEVILLE POWER ADMINISTRATION HAS BEEN A POSITIVE ONE WHICH HAS CARRIED OVER EVEN AFTER HIS DEPARTURE.

WE HAVE FOUND THAT DISPITE HIS LIMITED KNOWLEDGE AND EXPERIENCE WITH TRIBAL RIGHTS AND INTERESTS IN THE AREAS OF POWER, ENERGY, AND WATER, HE WAS AT LEAST WILLING TO TRY TO FIND OUT AS MUCH AS HE COULD IN TRYING TO ACCOMMODATE THOSE TRIBAL RIGHTS AND INTERESTS IN CARRING OUT HIS AGENCY'S MANDATE.

ONE NET BENEFIT HAS BEEN THE COMMITMENT OF POWER FOR OUR TRIBE'S MOUNT TOLMAN COPPER-MOLYBDENUM MINING PROJECT WHICH WE INTEND TO DEVELOPE AS TIME AND CONDITIONS ALLOW US TO PROCEED. MR HODEL AND BPA MAY NOT HAVE ALWAYS AGREED WITH OUR TRIBE'S VIEWS IN CERTAIN AREAS, OR MAY NOT HAVE UNDERSTOOD THEM AT THE TIME, BUT WE HAVE BEEN ABLE TO CONDUCT NEGOTIATIONS IN AN OPEN AND FRANK MANNER WHICH HAS WORKED TO OUR MUTUAL ADVANTAGE.

AGAIN, WE WANT TO EXPRESS SUPPORT FOR MR HODEL'S NOMINATION AND WE THANK THE COMMITTEE FOR THE OPPORTUNITY TO EXPRESS OUR VIEWS ON THIS MATTER.

SINCERELY
AL AUBERTIN, CHAIRMAN OF COLVILLE BUSINESS COUNCIL

14:44 EST

MGMCOMP

Committee On Power For The Southwest

400 S. Broadway, Suite 3
P.O. Box 1360

Edmond, Okla. 73083
Phone 405-340-1900

NOV 30 1982

November 29, 1982

Honorable James McClure
Chairman
Senate Energy and National
Resources Committee
Room 3106
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator McClure:

On behalf of our 240 consumer owned utility systems membership, we urge the prompt confirmation of Donald Hodel as Secretary of Energy. Mr. Hodel is qualified by both experience and integrity to be Secretary of Energy.

The Committee on Power for the Southwest is an association of 175 rural electric cooperatives and 65 municipal electric systems which purchase power from the Southwestern Power Administration and all are located in the six states of Arkansas, Kansas, Louisiana, Missouri, Oklahoma and Texas that comprise the service area of SWPA.

We respectfully request that our views be recorded in the confirmation hearings for Mr. Hodel which your Committee will conduct on December 1, 1982.

Sincerely yours,

Michael L. McDowell

Michael L, McDowell
Executive Director

MM/lc

4-0552768335 12/01/82 ICS IPMMTZZ CSP POMT
2063576778 NL TDMT OLYMPIA WA 29 12-01
0615P EST 18:16 EST

western union **Telegram**

DEC 2 1982

THE HONORABLE JAMES MCCLURE RPT DLY MGM, DLR
3121 DIRKSEN SENATE OFFICE BLDG
WASHINGTON DC 20510

WE WOULD APPRECIATE YOUR SERIOUS CONSIDERATION OF APPROVING DON HODEL FOR SECRETARY OF ENERGY. THE WASHINGTON STATE BUILDING AND CONSTRUCTION TRADES COUNCIL GIVES ITS FULL ENDORSEMENT FOR MR. HODEL.

ROBERT L DILGER EXECUTIVE SECRETARY WASHINGTON STATE BUILDING AND CONSTRUCTION TRADES COUNCIL
1063 SOUTH CAPITAL WAY ROOM 211
OLYMPIA WA 98501

18:16 EST

IPMPOMX, WSH

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
WASHINGTON, D.C. 20510

4-0198918335 12/01/82 ICS IPMMTZZ CSP PDMT
2028879155 TDMT WASHINGTON DC 126 12-01
1226P EST 12:27 EST

DEC 1 1982

western union

Telegram

Official Committee File

HONORABLE JAMES A MCCLURE CHAIRMAN RPT DLY MGM
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES 3106 DIRKSEN SENATE
OFFICE BLDG
WASHINGTON DC 20510

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
WASHINGTON, D.C. 20510

ON BEHALF OF MY COLLEAGUES WHO LEAD THE 37 AMERICAN INDIAN TRIBES WHICH COMPRISE THE COUNCIL OF ENERGY RESOURCE TRIBES (CERT), I TAKE PLEASURE IN RECOMMENDING YOUR FORTHRIGHT CONFIRMATION OF DONALD P HODEL AS THE COUNTRY'S NEW SECRETARY OF ENERGY

IT HAS BEEN OUR PRIVILEGE TO WORK WITH MR HODEL DURING HIS TENURE AS UNDERSECRETARY OF THE DEPARTMENT OF THE INTERIOR, AND WE HAVE FOUND HIM A PUBLIC SERVANT DEDICATED TO ENABLING THE INDIAN PEOPLE TO PURSUE OUR GOALS OF SELF-GOVERNMENT, SELF-DETERMINATION AND SELF-SUFFICIENCY. AS SUBSTANTIAL ENERGY-RESOURCE OWNERS AND PRODUCERS, AND ALSO AS GOVERNMENTS AND AS COMMUNITIES, WE LOOK FORWARD TO CONTINUING OUR WARM RELATIONSHIP WITH MR HODEL AT THE ENERGY DEPARTMENT UPON HIS CONFIRMATION BY YOUR COMMITTTEE. SINCERELY

WILFRED SCOTT
CHAIRMAN NEZ PERCE TRIBE OF IDAHO
CHAIRMAN COUNCIL OF ENERGY RESOURCE TRIBES
1140 CONNECTICUT AVE NORTHWEST SUITE 310
WASHINGTON DC 20036

12:27 EST

IPMPOMX WSH

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645

Western Union Mailgram

4-0445568337 12/03/82 ICS IPMMTZZ CSP WSHB
2028879155 MGM TDMT WASHINGTON DC 131 12-03 0328P EST

HONORABLE JAMES A MCCLURE
US SENATE
WASHINGTON DC 20510

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES DEC 6 1982
RECEIVED
DEC 6 1982
WASHINGTON, D.C. 20510

THE ELECTED LEADERSHIP OF THE CROW TRIBE OF INDIANS WOULD LIKE TO SUBMIT ITS STATEMENT OF SUPPORT FOR THE CONFIRMATION OF DONALD P. HODEL, AS THE NEXT SECRETARY OF THE DEPARTMENT OF ENERGY.

AS WE HAVE PUBLICALLY ANNOUNCED, OUR 6,800 MEMBER MONTANA TRIBE HAS EMBARKED ON "A NEW BEGINNING" OF STRENGTHENED MANAGEMENT AND ACCOUNTABILITY WHICH WILL PERMIT OUR PARTICIPATION IN SEVERAL MAJOR JOINT-VENTURE ENERGY DEVELOPMENT PROJECTS. WE WILL CONTINUE TO LOOK FOR SUPPORT TO THE DEPARTMENT OF ENERGY AND TO MR. HODEL, WHO HAS PROVEN ABILITIES AS A MANAGER AND ADMINISTRATOR AND WHO HAS AFFIRMED HIS SUPPORT FOR THE GOALS OF OUR OWN TRIBE AND THE COUNCIL OF ENERGY RESOURCE TRIBES.

SINCERELY,
DONALD STEWART CHAIRMAN
CROW TRIBE OF INDIANS
CROW AGENCY, MONTANA

18:16 EST

MGMCOMP

Lee Dallager
4037 Cottage Grove
Des Moines, Iowa 50311

Honorable Roger Jepsen
U.S. Senate
Washington, D.C.

November 30, 1982

Dear Senator Jepsen,

In response to your inquiry, I am pleased to advise that I am quite well aquainted with Mr. Don Hodel who has been appointed Secretary of Energy.

My relationship with Don Hodel has been through a variety of areas going back several years. When I was National President of the Izaak Walton League I had occasion to work with Don Hodel on a number of things and also was involved in a couple of good projects with him through the J.N. "Ding" Darling Foundation of which I am a Trustee.

I am quite pleased that Don Hodel has been appointed Secretary of Energy and I can't think of anyone more qualified for the job. Don's background is certainly heavy in the Energy area and also his environmental awareness is very respectable. I am sure that from an environmental standpoint, Don Hodel will prove to be very responsible in his new position.

Thanks for the oppurtunity to give my most hearty recommend of Don Hodel.

Sincerely,

Lee

Lee Dallager

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 1 1982
WASHINGTON, D.C. 20510

GEORGE F. GAUZZA
2921 NORTH SYCAMORE STREET
ARLINGTON, VIRGINIA 22207
PHONE 703-533-8487

November 29, 1982

Senator James McClure
Chairman
Committee on Energy and Natural Resources
3121 Dirkson Building
Washington, D.C. 20510

Dear Senator McClure:

I first met Secretary of Energy designee, Don Hodel, when he joined the Inter ior Department in 1969 as Deputy Administrator of Bonnieville Power Administration. At the time I served ad Director of Management Operations. As a consequence of the oil embargo, Secretary Morton asked me to be responsible for the conservation of energy in the department. Don Hodel was of invaluable assistance to me in carrying out th is assignment. He was especially helpful in establishment of policies and standards which resulted in a savings of 25% of all types of energy throughout the Interior Department and the remainder of the Federal Government. In 1975 he was given the Interior Department Distinguished Service Award for his achievements in energy conservation.

I was and remain impressed by Don Hodel's gread administrative ability and his unique personal attributes which help him inspire his associates and employees to work hard and take pride in carrying out their duties. Don Hodel is superbly qualified to provide leadership and inspiration to the Department of Energy which you know has been beset with various reorganization schemes and layoffs of federal employees.

I truly believe that under Don Hodel's tenue our country will experience true conservation of energy carried out in a manner that will meet our energy goals and at the same time protect and enhance the environment. As a retired federal employee who served in the government for 37 years I am proud to endorse Don Hodel and believe I speak for most career government employees who worked with him and recognized his abilities.

Sincerely,

George F. Gauzza
George F. Gauzza

IBEW
1125 15TH ST NW
WASHINGTON DC 20005

Western Union Mailgram

4-112161U335022 12/01/82 ICS WA16614 WSHB
03070 MLTN VA 12/01/82

DEC 2 1982

THE HON JAMES A. MCCLURE
UNITED STATES SENATE
WASHINGTON, DC 20510

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
WASHINGTON, D.C. 20510

DEC 1 1982
TO ALL MEMBERS OF THE U.S. SENATE:
ON BEHALF OF THE ONE MILLION MEMBERS OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (I.B.E.W.) I URGE YOU TO VOTE IN FAVOR OF THE CONFIRMATION OF DONALD HODEL AS SECRETARY, DEPARTMENT OF ENERGY.
OUR PREVIOUS KNOWLEDGE AND WORKING RELATIONSHIP WITH MR. HODEL IN THE ENERGY FIELD WINS HIM OUR ENDORSEMENT AND SUPPORT. THE IBEW BELIEVES THAT HE IS AN EXCELLENT CHOICE AND THAT HIS LEADERSHIP IN THE DEPARTMENT OF ENERGY WILL BE AN ASSET TO OUR NATION.
CHARLES H PILLARD, INTERNATIONAL PRESIDENT
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
1125 15TH ST, N.W.
WASHINGTON, D. C. 20005
CHP BDM VOR DD

3187

19:31 EST

MGMCOMP

4-0343088335 12/01/82 ICS IPMRNCZ CSP POMT
SUSPECTED DUPLICATE
7145986466 POM TDRN DIAMOND BAR CA 21 12-01

western union

Telegram

0250P EST 14:52 EST

DEC 2 1982

SENATOR JAMES A. MCCLURE RPT DLY MGM
CAPITOL ONE DC

LOCAL 47 IBEW REPRESENTING APPROXIMATELY 5,000 MEMBERS SUPPORTS NOMINATION OF HODEL AS SECRETARY OF ENERGY AND URGES YOUR SUPPORT. THANK YOU

RAE E. SANBORN
BUSINESS MANAGER

600 NORTH DIAMOND BAR BLVD
DIAMOND BAR CA 91765

14:53 EST

IPMPOMX WSH

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
[illegible]
WASHINGTON, D.C. 20510

4-059098S334 11/30/82 ICS IPMRNCZ CSP POMT
8015321581 POM TDPN SALT LAKE CITY UT 48 11-30
0711P EST 20:14 EST

western union **Telegram**

JAMES MCCLURE FPT DLY MGM
CAPITOL ONE DC

DEC 1 1982

ON BEHALF OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 57 WHICH REPRESENTS IN EXCESS OF 3,500 MEMBERS IN UTAH, IDAHO, AND WYOMING WE WOULD LIKE TO URGE YOUR SUPPORT FOR THE APPOINTMENT OF DONALD P HOLEDELL AS SECRETARY OF ENERGY. YOUR ANTICIPATED SUPPORTED IS APPRECIATED. SINCERELY

BLAINE A NEWMAN
1743 WEST NORTH TEMPLE
SALT LAKE CITY UT 84116

20:14 EST

IPMPOMX WSH

4-037896S334 11/30/82 ICS IPMRNCZ CSP POMT
2063234505 POM TOPN SFATTLE WA 34 11-30
0325P EST 15:25 EST

western union

Telegram

SENATOR JAMES A MC CLURE RPT DLY MGM
CAPITUL ONE DC

DEC 1 1982

IBEW LOCAL 77 SUPPORTS PRESIDENT REAGAN'S NOMINATION OF HODEL AS SECRETARY OF ENERGY. HIS BACKGROUND IN THIS FIELD CERTAINLY QUALIFIES HIM FOR THAT POSITION. IBEW LOCAL 77 STRONGLY URGES THAT YOU SUPPORT HIS NOMINATION

CHARLES P SILVERNALE BUSINESS MGR LOCAL 77 1718 MELROSE AVE SEATTLF
WA 98122
1718 MELROSE AVE
SEATTLE WA 98122

15:26 EST

IPMPOMX WSH

4-0332685334 11/30/82 ICS IPMRNCZ CSP POMT
5032345383 POM TDRN PORTLAND OR 24 11-30
0241P EST 14:40 EST

NOV 3 0 1982

western union

Telegram

SENATOR JAMES A MCCLURE RPT DLY MGM
CAPITOL ONE DC

MR DON HODEL IS AN EXCELLENT CHOICE FOR SECRETARY OF ENERGY, I RESPECTFULLY URGE YOUR SUPPORT OF HIS NOMINATION

R W AYERS, BUSINESS MANAGER LOCAL UNION 125 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS
211 NORTHEAST 18 AVE
PORTLAND OR 97232

14:40 EST

IPMPOMX WSH

4-0172345335 12/01/82 ICS IPMRNCZ CSP POMT
6022756222 NL TDRN PHOENIX AZ 47 12-01
1159A EST 12:00 EST

western union **Telegram**

SENATOR JAMES MCCLURE RPT DLY MGM, DLR
3121 DIRKSEN SENATE BLDG
WASHINGTON DC 205!^

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
WASHINGTON, D.C. 20510

2 1982

DEAR SENATOR:

I.B.E.W. LOCAL UNION 266 REPRESENTING A MEMBERSHIP OF 1800 PLUS MEMBERS ENCOURAGES YOU TO SUPPORT THE NOMINATION OF MR DONALD T HODEL FOR SECRETARY OF ENERGY.

WE FEEL HIS QUALIFICATIONS ARE VERY IMPRESSIVE FOR THIS APPOINTMENT.

THANK YOU FOR YOUR CONSIDERATION IN THIS MATTER.

RESPECTIVELY,
BILL BEARDEN BUSINESS MANAGER FINANCIAL SECRETARY IBEW LOCAL UNION 266
4340 EAST MCDOWELL RD
PHOENIX AZ 85008

12:00 EST

IPMPOMX WSH

IBEW LOCAL 387 BY TM
5818 NORTH 7 ST
PHOENIX AZ 85014

Western Union Mailgram

4-0112738335 12/01/82 ICS IPMBNGZ CSP WSHB
6022641847 MGM TDBN PHOENIX AZ 76 12-01 1054A EST

DEC 2 1982

SENATOR JAMES MCCLURE
U S SENATE
WASHINGTON DC 20510

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
WASHINGTON, D.C. 20510

LOCAL UNION 387, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, CONSISTING OF APPROXIMATELY 3000 MEMBERS WHO ARE EMPLOYED IN THE UTILITIES AND MANUFACTURING INDUSTRY, STRONGLY URGE YOUR SUPPORT OF DONALD P HODEL AS SECRETARY OF ENERGY, MR HODEL IS WELL QUALIFIED FOR THIS POSITION AND WILL ACT IN THE BEST INTEREST OF OUR GREAT NATION.

CLYDE BOWDEN, BUSINESS MANAGER, IBEW LCL 387
5818 NORTH 7 ST
PHOENIX AZ 85014

10:55 EST

MGMCOMP

IBEW LOCAL UNION 1245 J MCNALL
PO BOX 4790
WALNUT CREEK CA 94596

Western Union Mailgram

1-0615768334003 11/30/82 ICS IPMRNCZ CSP WSHA
2 4159336060 MGM TDRN WALNUT CREEK CA 11-30 0753P EST

Official Committee File

DEC 1 1982

THE HONORABLE JAMES A
U.S. SENATE BLDG
WASHINGTON DC

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
WASHINGTON, D.C. 20510

THIS IS A CONFIRMATION COPY OF A TELEGRAM ADDRESSED TO YOU
IBEW LOCAL UNION 1245 SUPPORTS PRESIDENT REAGANS NOMINATION OF MR HODL AS SECRETARY OF ENERGY HIS BACKGROUND IN THIS FIELD CERTAINLY QUALIFIES HIM FOR THAT POSITION. IBEW LOCAL UNION 1245 STRONGLY URGES THAT YOU SUPPORT HIS NOMINATION. SINCERELY

JACK MCNALLY, BUSINESS MANAGER, IBEW LOCAL UNION 1245
PO BOX 4790
WALNUT CREEK CA 94596

19:53 EST

MGMCOMP

COUNCIL OF ENERGY RESOURCE TRIB
1140 CONNECTICUTT AVE NW RM 31
WASHINGTON DC 20036

Western Union Mailgram

4-0189825336 12/02/82 ICS IPMMTZZ CSP WSHA
2028879155 MGM TDMT WASHINGTON DC 137 12-02 1206P EST

HONORABLE JAMES A MCLURE
3121 DIRKSEN SENATE OFC
WASHINGTON DC 20510

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 3 1982
WASHINGTON, D.C. 20510

EC 3 1982

AS PRESIDENT OF THE JICARILLA APACHE TRIBE OF NEW MEXICO, AND ALSO AS VICE CHAIRMAN OF THE COUNCIL OF ENERGY RESOURCE TRIBES, I WOULD LIKE TO COMMEND YOU AND YOUR COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR MOVING WITH ALL PRUDENT SPEED TOWARD THE CONFIRMATION OF DONALD HODEL AS SECRETARY OF ENERGY. MR HODEL HAS SERVED HIS COUNTRY WELL AS UNDERSECRETARY OF THE INTERIOR DEPARTMENT. I BELIEVE THAT, AS SECRETARY OF ENERGY, MR HODEL WILL CONTINUE TO PURSUE HIS STATED COMMITMENT TO ASSISTING THE TRIBES TO DEVELOP OUR ENERGY RESOURCES IN A MANNER CONSISTANT WITH OUR ECONOMIC HEALTH, THE WELFARE OF OUR PEOPLE AND THE GOOD OF THE NATION. SINCERELY,

LEONARD ATOLE PRESIDENT JICARILLA APACHE TRIBE
VICE CHAIRMAN COUNCIL OF ENERGY RESOURCE TRIBES
DULCE NM

12:07 EST

MGMCOMP

1-0165291335 12/01/82 TWX NAM WSH POMT
001 WASH, DC
15:57 EST

western union **Telegram**

THE HONORABLE JAMES MCCLURE
COMMITTEE ON ENERGY AND NATURAL
 RESOURCES
UNITED STATES SENATE
WASHINGTON, DC 20510

DEC 2 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
WASHINGTON, D.C. 20510

DEAR MR. CHAIRMAN:

ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS (NAM), I URGE THE SWIFT CONFIRMATION OF DONALD P. HODEL AS SECRETARY OF THE DEPARTMENT OF ENERGY.

SECRETARY HODEL IS EXCEPTIONALLY WELL QUALIFIED FOR THIS OFFICE AND HAS ESTABLISHED A RECORD OF ACHIEVEMENT IN HIS FORMER POSITION AS UNDERSECRETARY OF THE DEPARTMENT OF THE INTERIOR. HIS SENSITIVITY TO THE NEED FOR A BALANCED NATIONAL ENERGY POLICY AND HIS DEMONSTRATED ABILITY TO GET THE JOB DONE WILL BE A VALUABLE ADDITION TO THE PRESIDENT'S CABINET AND A BENEFIT TO THE NATION AS A WHOLE.

NAM FULLY ENDORSES SECRETARY HODEL'S APPOINTMENT AND REQUESTS THAT YOU AND YOUR COLLEAGUES CONFIRM HIM AS SOON AS POSSIBLE.

SINCERELY,

ALEXANDER B. TROWBRIDGE
PRESIDENT
NATIONAL ASSOCIATION
 OF MANUFACTURERS

15:57 EST

IPMPOMX WSH

DEC 1 1982

NACD

Official Committee File

MILTON E. "Bud" MEKELBURG
President

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
RECEIVED
WASHINGTON, D.C. 20510

December 1, 1982

The Honorable James A. McClure
Chairman, Energy and Natural Resources Committee
Washington, D.C. 20510

Dear Mr. Chairman:

It has been our pleasure to work with Mr. Donald Hodel in his term as Under Secretary of the Interior on many occasions. In each instance, we have found him to be a most knowledgable and reasonable individual, highly motivated to carry out his public duties to the best of his ability.

We think President Reagan made an excellent choice in nominating Mr. Hodel to be Secretary of the Department of Energy, and urge you and your Committee to support his confirmation.

Sincerely,

Milton E. Mekelburg

Milton E. Mekelburg
President

National Association of Conservation Districts
Rm. 730, 1025 Vermont Ave., N.W., Washington, DC 20005
Phone (202) 347-5995

DEC 6 1982

NATIONAL ASSOCIATION OF REALTORS

REALTOR®

Harley W. Snyder, President
Donald H. Treadwell, President-elect
Jack Carlson, Executive Vice President

777 14th Street, N.W., Washington, D.C. 20006
Telephone 202 383 1000

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 6 1982
WASHINGTON, D.C. 20510

December 3, 1982

Honorable James A. McClure
United States Senate
Committee on Energy and Natural Resources
Washington, D.C. 20510

Dear Jim:

On behalf of the 600,000 members of the NATIONAL ASSOCIATION OF REALTORS®, we endorse the nomination of Donald P. Hodel to serve as Secretary of Energy.

As you know, I am personally aware of Mr. Hodel's capabilities. I was his supervisor when he was Administrator of the Bonneville Power Administration and can vouch for his dedication, diligence and capacity to serve. Since then he has received many recognitions and has served with distinction as Under Secretary of Interior.

Mr. Hodel would bring to this responsibility far greater background and experience than has been the case with most appointments to Cabinet positions.

Even though energy prices have subsided, world-wide supplies have increased and conservation of energy use has improved, there is still a need for an experienced Secretary of Energy to coordinate energy policy. We are hopeful the Senate Energy and Natural Resources Committee will find time to review his nomination and report it to the Senate so that Mr. Hodel can be confirmed before the Senate adjourns.

Cordially,

Jack

Jack Carlson

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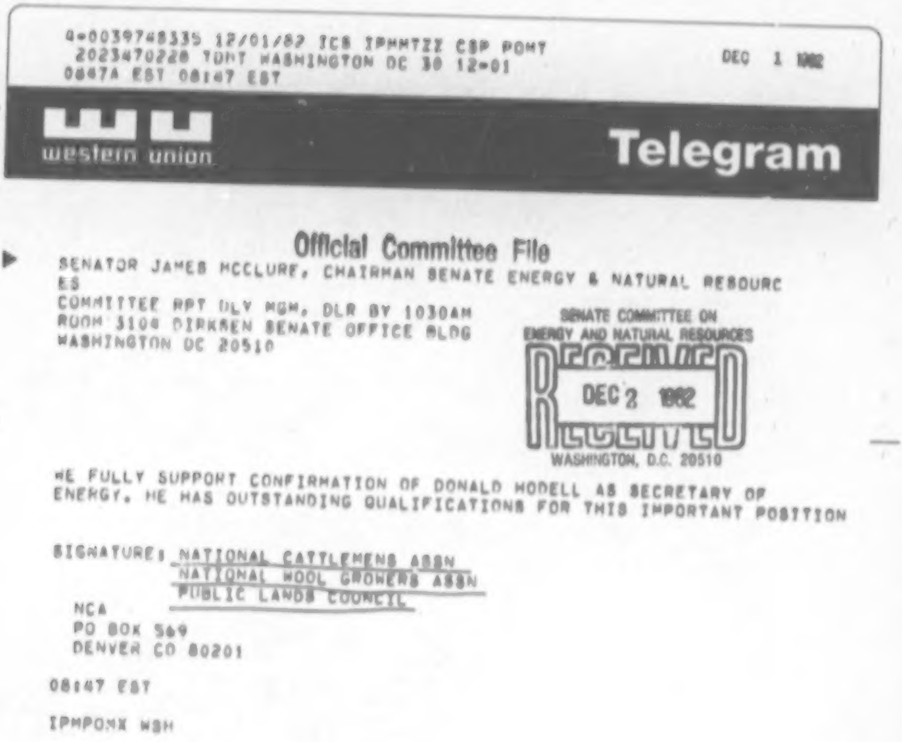

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2023470228 TDMT WASHINGTON DC 30 12-01
0847A EST 08:47 EST

DEC 1 1982

western union

Telegram

Official Committee File

SENATOR JAMES MCCLURE, CHAIRMAN SENATE ENERGY & NATURAL RESOURCES
COMMITTEE RPT DLY MGM, DLR BY 1030AM
ROOM 3104 DIRKSEN SENATE OFFICE BLDG
WASHINGTON DC 20510

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
WASHINGTON, D.C. 20510

WE FULLY SUPPORT CONFIRMATION OF DONALD HODELL AS SECRETARY OF ENERGY. HE HAS OUTSTANDING QUALIFICATIONS FOR THIS IMPORTANT POSITION

SIGNATURE: NATIONAL CATTLEMENS ASSN
NATIONAL WOOL GROWERS ASSN
PUBLIC LANDS COUNCIL
NCA
PO BOX 569
DENVER CO 80201

08:47 EST

IPMPOMX WSH

11-30-82

NRECA NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
1800 Massachusetts Avenue, N.W.
Washington, D.C. 20036/202-857-9500

November 30, 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 1 1982
WASHINGTON, D.C. 20510

The Honorable James A. McClure
Chairman
Senate Committee on Energy
and Natural Resources
3106 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

We wish to offer this brief statement in support of Donald P. Hodel as Secretary of Energy and urge expeditious confirmation of his appointment to this important position.

We first met Mr. Hodel when he joined the staff of the Bonneville Power Administration in 1969 as the Deputy Administrator and we were pleased when he was named as Administrator of the BPA in 1970. During his six years as Administrator, Mr. Hodel performed exceptionally well in directing the affairs of this large Federal Power Marketing agency and exhibited a commanding grasp of this nation's energy problems.

We continued to work with him during his tenure as President of the North American Electric Reliability Council and we were greatly impressed with his executive ability, his knowledge of the power industry and his objectivity in dealing with the investor-owned utilities, the publicly-owned utility systems and our rural electric cooperatives. Our membership continued to work with Mr. Hodel during his tenure as Under Secretary of the Department of the Interior where his performance again was exemplary.

In all of our dealings with Mr. Hodel, we have found him to be an able Administrator and a man of courage and absolute integrity; he has earned the respect of the Federal employees and the public through his demonstrated capabilities.

Very sincerely yours,

Robert D. Partridge
Executive Vice President

RDP:js

cc: Donald P. Hodel

STATEMENT OF

J. W. "PAT" O'MEARA
EXECUTIVE VICE PRESIDENT
NATIONAL WATER RESOURCES ASSOCIATION

before the

COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

December 1, 1982

Mr. Chairman and Members of the Committee:

The National Water Resources Association is a confederation of State water associations in the 17 Reclamation States and Hawaii. Our principal area of interest is the development of the water resources of the West, but as the Chairman and members of this Committee are well aware, the development of water resources depends, to a large measure, on the concurrent development of hydropower. Thus, the appointment of the Secretary of Energy is of major interest and concern to the members of the National Water Resources Association.

We are appearing before this Committee to endorse in the most stringent possible terms the appointment of Donald Paul Hodel as Secretary of the Department of Energy. We believe the Administration is most fortunate to have a man with the qualifications of experience and ability accept this demanding, and more often than not, thankless job.

Mr. Chairman, you will recall that I spent many years as an employee of the Department of the Interior, as did Don Hodel. While we had very different responsibilities--he was with the Bonneville Power Administration and I was with the Office of Saline Water--we both reported to the same Assistant Secretary. This gave me the opportunity to become well acquainted with Mr. Hodel and observe, first hand, his administrative abilities.

Not only is Don Hodel an experienced administrator, his years of exceptional service at BPA have given him exceptional experience in Government operations, Congressional liaison, power generation, and power marketing. With that background, it is obvious to the members of NWRA that President Reagan made an excellent choice when he nominated Donald Hodel to be Secretary of Energy.

Just before he resigned his position as Administrator of BPA, Mr. Hodel addressed the 1977 NWRA National Convention in Boise, Idaho. Although that was over 5 years ago, I believe excerpts of his remarks deserve to be repeated before this Committee because they have stood the test of time and demonstrate his keen grasp of energy problems, both foreign and domestic.

Mr. Hodel told the NWRA delegates: "I'm here to talk about energy. It's a good-news, bad-news situation. The good news is that there is enough energy in this world for all of the people now here, and all of the people in the foreseeable future to have all of the energy they could conceivably ever want to have, for as long as they could conceivably want to have it; and the bad news is, we do not know how to deliver it. And we have so fouled up the system that, until at least the year 2000, we are probably not going to be able to meet the energy requirements of this nation and the world....

"The United States cannot move without affecting the whole world. A ripple on our energy shores may cause tidal waves on the shores of other nations....

"Who suffers in the event of a catastrophic or disastrous gap between energy demand and supply? The answer, of course, is everyone suffers....

"As far as the developing nations are concerned, 4-1/2 billion people will not acquiesce in being condemned to perpetual 'energy misery.' In their view, our continued, increasing consumption of oil is a form of economic warfare. It really doesn't matter very much whether it's conscious or unconscious on our part. The impacts on them are as severe if we do it unconsciously as if we do it consciously, and in their view we are forcing starvation on their people.

"The U.S. and other developed nations have the economic resources to buy oil. The developing nations can't afford to compete with us in the market. We will be in the marketplace to the very end, because we have more economic resources than they do. Our oil policy, our coal policy, our nuclear policy appear to them to be clearly contrary to their needs. To them, these policies do not appear to be rational. Whether this is intentional or unintentional is not significant because it appears we are condemning millions of people in those countries to malnutrition and starvation....

"We can restructure our energy house. We must get on with that task."

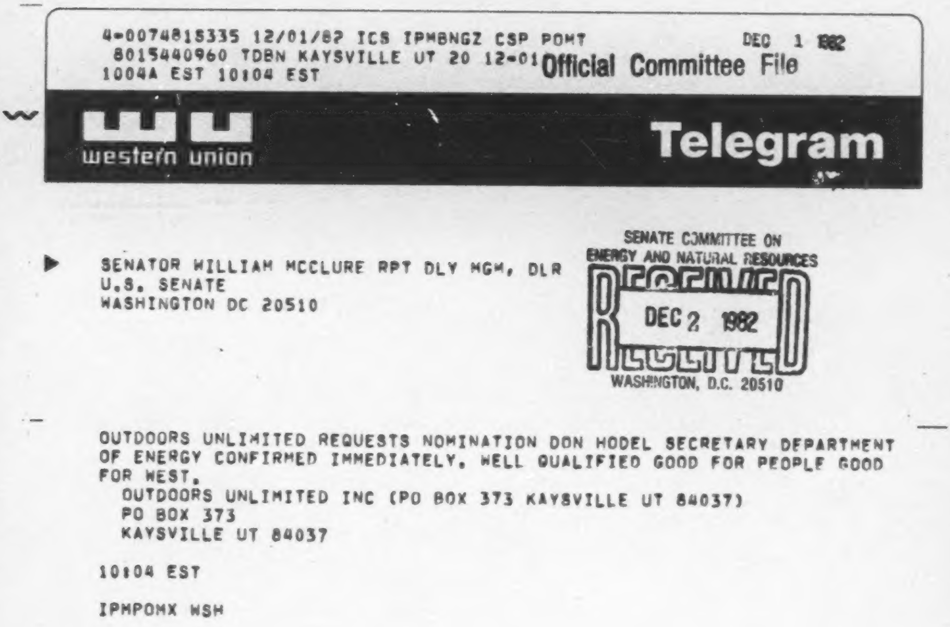
I'll not comment on his statement, it speaks for itself and it speaks eloquently, but I would like to make one additional comment concerning a demonstrated quality of Mr. Hodel that I did not mention earlier--integrity.

The Government is indeed most fortunate to obtain the services of a man whose background combines the finest technical and administrative experience with high moral practices and ideals.

We urge the Committee to quickly approve Mr. Hodel's nomination so he can begin to address the many complex issues that face the Department of Energy.

Thank you.

****



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8015440960 TDBN KAYSVILLE UT 20 12-01
1004A EST 10:04 EST

DEC 1 1982
Official Committee File

western union
Telegram

SENATOR WILLIAM MCCLURE RPT DLY MGM, DLR
U.S. SENATE
WASHINGTON DC 20510

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
WASHINGTON, D.C. 20510

OUTDOORS UNLIMITED REQUESTS NOMINATION DON HODEL SECRETARY DEPARTMENT OF ENERGY CONFIRMED IMMEDIATELY, WELL QUALIFIED GOOD FOR PEOPLE GOOD FOR WEST.

OUTDOORS UNLIMITED INC (PO BOX 373 KAYSVILLE UT 84037)
PO BOX 373
KAYSVILLE UT 84037

10:04 EST

IPMPOMX WSH

4-0538138334 11/30/82 ICS IPMMTZZ CSP POMT
5032434183 POM TDMT PORTLAND OR 20 11-30
0557P EST 20:12 EST

western union **Telegram**

SENATOR JAMES A. MCCLURE RPT DLY MGM
CAPITOL ONE DC

DEC 1 1982

WE URGE YOUR SUPPORT OF DONALD P. HODEL AS ENERGY SECRETARY. MR. HODEL HAS THE BEST QUALIFICATIONS FOR THIS APPOINTMENT.

DAVID F BOLENDER PRESIDENT
PACIFIC POWER AND LIGHT

920 SOUTHWEST 6 AVE

PORTLAND OR 97204

20:12 EST

IPMPOMX WSH

L PYKE
PUGET POWER BLDG
BELLEVUE WA 98009

Western Union Mailgram

4-0420908333 11/29/82 ICS IPMMTZZ CSP WSHB
2064536796 MGM TDMT BELLEVUE WA 97 11-29 0400P EST

NOV 30 1982

SENATOR JAMES A MCCLURE
3121 DIRKSEN SENATE OFFICE BLDG
WASHINGTON DC 20510

I WISH TO STRONGLY ENDORSE THE NOMINATION OF DONALD HODEL AS SECRETARY OF ENERGY. I HAVE WORKED WITH MR HODEL IN HIS CAPACITY AS ASSISTANT ADMINISTRATOR AND ADMINISTRATOR AT EPA, AS HEAD OF THE NATIONAL ELECTRIC RELIABILITY COUNCIL AND AS ASSISTANT SECRETARY OF THE INTERIOR. HE IS A HIGHLY SKILLED, WELL-QUALIFIED PERSON AND WOULD BE AN EXCELLENT SECRETARY OF ENERGY. HE IS ALSO A GOOD AND VALUED PERSONAL FRIEND.

JOHN W ELLIS
PRESIDENT
PUGET SOUND POWER AND LIGHT CO

PUGET POWER BLDG
BELLEVUE WA 98009

16:00 EST

MGMCOMP

COUNCIL OF ENERGY RESOURCE TRI
1140 CONNECTICUTT AVE NW RM 31
WASHINGTON DC 20036

Western Union Mailgram

4-0201055336 12/02/82 ICS IPMMTZZ CSP WSHB
2028879155 MGM TDMT WASHINGTON DC 141 12-02 1218P EST

DEC 3 1982

HONORABLE JAMES A MCCLU[illegible]
3121 DIRKSEN SENATE OFC[illegible]
WASHINGTON DC 20510

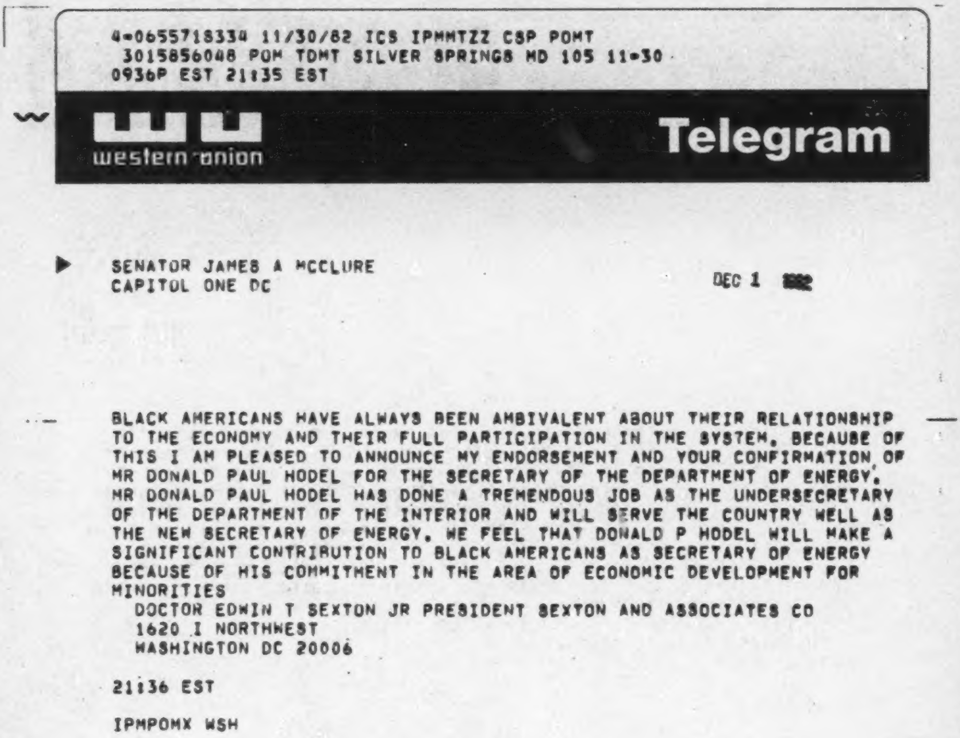
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 3 1982
WASHINGTON, D.C. 20510

AS CHAIRMAN OF THE ROSEBUD SIOUX TRIBE, I WOULD LIKE TO CALL UPON THE MEMBERS OF YOUR COMMITTEE ON ENERGY AND NATURAL RESOURCES TO CONFIRM THE NOMINATION OF DONALD P HODEL, AS SECRETARY OF THE DEPARTMENT OF ENERGY. THOSE AMERICAN INDIAN TRIBES WHICH OWN ENERGY RESOURCES FEEL IT IS EXTREMELY IMPORTANT THAT THE ENERGY DEPARTMENT BE HEADED BY A MAN WHO IS PERSONALLY FAMILIAR WITH THE NEEDS AND ASPIRATIONS OF OUR PEOPLE, AND PERSONALLY SYMPATHETIC TO WHAT WE HOPE TO ACHIEVE, BOTH INDIVIDUALLY AND THROUGH OUR ORGANIZATION, THE COUNCIL OF ENERGY RESOURCE TRIBES (CERT). I BELIEVE THAT DON HODEL IS SUCH A MAN, AND I RECOMMEND HIS CONFIRMATION TO YOUR COMMITTEE. SINCERELY

CARL WALN CHAIRMAN ROSEBUD SIOUX TRIBAL COUNCIL
EXECUTIVE COMMITTEE MEMBER COUNCIL OF ENERGY RESOURCE TRIBES,
ROSEBUD SD

12:19 EST

MGMCOMP



4-0655718334 11/30/82 ICS IPMMTZZ CSP POMT
3015856048 POM TDMT SILVER SPRINGS MD 105 11-30
0936P EST 21:35 EST

western union Telegram

SENATOR JAMES A MCCLURE
CAPITOL ONE DC

DEC 1 1982

BLACK AMERICANS HAVE ALWAYS BEEN AMBIVALENT ABOUT THEIR RELATIONSHIP TO THE ECONOMY AND THEIR FULL PARTICIPATION IN THE SYSTEM, BECAUSE OF THIS I AM PLEASED TO ANNOUNCE MY ENDORSEMENT AND YOUR CONFIRMATION OF MR DONALD PAUL HODEL FOR THE SECRETARY OF THE DEPARTMENT OF ENERGY. MR DONALD PAUL HODEL HAS DONE A TREMENDOUS JOB AS THE UNDERSECRETARY OF THE DEPARTMENT OF THE INTERIOR AND WILL SERVE THE COUNTRY WELL AS THE NEW SECRETARY OF ENERGY, WE FEEL THAT DONALD P HODEL WILL MAKE A SIGNIFICANT CONTRIBUTION TO BLACK AMERICANS AS SECRETARY OF ENERGY BECAUSE OF HIS COMMITMENT IN THE AREA OF ECONOMIC DEVELOPMENT FOR MINORITIES

DOCTOR EDWIN T SEXTON JR PRESIDENT SEXTON AND ASSOCIATES CO
1620 I NORTHWEST
WASHINGTON DC 20006

21:36 EST

IPMPOMX WSH

COUNCIL OF ENERGY RESOURCE TRIB
1140 CONNECTICUTT AVE NW RM 31
WASHINGTON DC 20036

Western Union Mailgram

4-0194895336 12/02/82 ICS IPMMTZZ CSP WSHB
2028879155 MGM TDMT WASHINGTON DC 131 12-02 1211P EST

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 3 1982
WASHINGTON, D.C. 20510

HONORABLE JAMES A MCCLURE
3121 DIRKSEN SENATE OFC BLDG
WASHINGTON DC 20510

DEC 3 1982

THE SOUTHERN UTE TRIBE OF IGNACIO, COLORADO, IS COMMITTED TO THE PRUDENT MANAGEMENT OF OUR EXTENSIVE ENERGY RESOURCES, IN ORDER TO IMPROVE THE QUALITY OF LIFE OF OUR PEOPLE, AND TO HELP THE COUNTRY MEET ITS ENERGY NEEDS DOMESTICALLY. AS CHAIRMAN OF THE SOUTHERN UTE TRIBE, I WANT TO RECOMMEND YOUR COMMITTEE'S FAVORABLE CONSIDERATION OF DONALD HODEL AS OUR NEXT SECRETARY OF ENERGY. I BELIEVE MR HODEL APPRECIATES OUR ENERGY-RELATED GOALS, AND THOSE OF THE 36 OTHER ENERGY-OWNING TRIBES WHICH HAVE JOINED US IN THE COUNCIL OF ENERGY OF RESOURCE TRIBES. I LOOK FORWARD TO WORKING CLOSELY WITH HIM IN HIS NEW ASSIGNMENT. SINCERELY,

LEONARD BURCH CHAIRMAN SOUTHERN UTE TRIBE
TREASURER COUNCIL OF ENERGY OF RESOURCE TRIBES
IGNACIO CO

12:12 EST

MGMCOMP

COUNCIL OF ENERGY RESOURCE TRIB
1140 CONNECTICUTT AVE NW RM 310
WASHINGTON DC 20036

Western Union Mailgram

4-0185078336 12/02/82 ICS IPMMTZZ CSP WSHB
2028879155 MGM TDMT WASHINGTON DC 118 12-02 1201P EST

HONORABLE JAMES A MCCLURE
3121 DIRKSEN SENATE OFFICE BLDG
WASHINGTON DC 20510

DEC 3

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
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DEC 3 1982
WASHINGTON, D.C. 20510

AS YOUR DELIBERATIONS ON THE SUBJECT OF DONALD HODEL'S NOMINATION TO BECOME SECRETARY OF ENERGY CONTINUE, I WOULD LIKE THE RECORD TO REFLECT MY VIEW, AS A MEMBER OF THE SPOKANE TRIBE OF WASHINGTON, THAT MR HODEL IS WELL-SUITED TO ASSUME THE POSITION AND DESERVES YOUR UNQUALIFIED SUPPORT, MR HODEL HAS DEMONSTRATED HIS CAPABILITIES AS A MANAGER AND ADMINISTRATOR, AND HAS AFFIRMED HIS SUPPORT FOR THE GOALS OF OUR OWN ORGANIZATION, THE COUNCIL OF ENERGY RESOURCE TRIBES. I HOPE HIS NOMINATION MEETS WITH YOUR COMMITTEE'S PROMPT APPROVAL.
YOURS TRULY,

RONALD "BUZZ" GUTIERREZ MEMBER SPOKANE TRIBAL BUSINESS COUNCIL
MEMBER EXECUTIVE COMMITTEE COUNCIL OF ENERGY RESOURCE TRIBES
WELLPINIT WA

12:02 EST

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UNITED
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INDUSTRIAL
COUNCIL

DEC 2 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 2 1982
WASHINGTON, D.C. 20510

December 1, 1982

The Honorable James A. McClure, Chairman
Senate Committee on Energy & Natural Resources
3121 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator McClure:

On behalf of the United States Industrial Council, I am writing to endorse the President's appointment of the Honorable Donald Paul Hodel as Secretary of Energy. Mr. Hodel has shown himself to be a superb manager as Under Secretary of Interior who will bring to his new post the highest moral character and intelligence, vast experience in energy policy, and a proven ability to make bureaucracy more efficient.

Mr. Hodel is widely respected within the Congress, in the business community, and among his colleagues at the Department of Interior.

In our view, the President could not have made a better appointment. I urge you to brook no delay in confirming this candidate.

Yours most sincerely,

Gregory N. Jonsson

Gregory N. Jonsson
Washington Representative

GNJ:dwh

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HARRY BLUNDELL
PRESIDENT
AND
CHIEF EXECUTIVE OFFICER

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 9 1982
WASH., D.C. 20510

December 1, 1982

The Honorable Senator James A. McClure
3121 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator McClure:

At a recent conference of representatives from the International Brotherhood of Electrical workers and Chief Executive Officers from western investor owned electric utilities the matter of President Reagan's selection of Donald P. Hodel to be the next Secretary of Energy was the subject of considerable discussion. Both labor and management representatives at that meeting supported Mr. Hodel's appointment.

Mr. Hodel is eminently qualified to fill this cabinet post. He served as administrator of the federal Bonneville Power Administration from 1973 to 1977. He had previous experience in the Department of Interior working on energy related issues. His most recent role as Deputy Secretary of Interior has helped him become even more familiar with Congress and the federal bureaucracy. Utility management and labor both recognize the value of such a background.

It is a rare and fortuitous occasion which brings such a person before you who is not only an expert in the field of his potential cabinet office -- energy -- but who is also able and willing to work cooperatively with Congress in striving to achieve objectives in that field which will help our country to become once again strong and independent.

I hope you will give Mr. Hodel your strong endorsement when the question of his confirmation is placed before you.

Sincerely,

Harry Blundell

Harry Blundell

HB/par

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HONORABLE JAMES A MCCLURE
US SENATE
WASHINGTON DC 20510

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 6 1982
WASHINGTON, D.C. 20510
DEC 6 1982

AS VICE-CHAIRMAN AND T[illegible] OF THE UTE MOUNTAIN UTE TRIBE OF COLORADO, I WOULD LIKE TO CALL UPON YOUR COMMITTEE TO CONFIRM THE NOMINATION OF DONALD P. HODEL AS SECRETARY OF THE DEPARTMENT OF ENERGY.

AS THE UTE MOUNTAIN UTE TRIBE CONTINUES TO MOVE FORWARD WITH ITS OWN ENERGY DEVELOPMENT PLANNING WE WILL NEED THE SUPPORT AND THE ASSISTANCE OF ADMINISTRATORS LIKE MR. HODEL, WHO HAVE CONTINUED TO AFFIRM THEIR SUPPORT FOR THE GOAL OF AMERICAN INDIAN ENERGY DEVELOPMENT, FOR THE BETTERMENT OF INDIVIDUAL INDIAN TRIBES AND TO SERVE THE ENERGY NEEDS OF THE UNITED STATES. MR. HODEL HAS MADE THIS COMMITMENT AND WE LOOK FORWARD TO LOOKING WITH HIM AS THIS ADMINISTRATION'S SECRETARY OF ENERGY.

SINCERELY,
JUDY KNIGHT VICE-CHAIRMAN AND TREASURER
MEMBER, EXECUTIVE COMMITTEE COUNSEL OF ENERGY RESOURCE TRIBES
TOWAOC, COLORADO

18:14 EST

MGMCOMP

western union **Telegram**

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2066826002 TDRN SEATTLE WA 43 11-30 0552P EST

DEC 1 1982

PMS THE HONORABLE JAMES A MCCLURE RPT DLY MGM, DLR
SENATE BLDG
WASHINGTON DC 20510

WE URGE YOUR SUPPORT OF DON HODEL FOR APPOINTMENT AS SECRETARY OF ENERGY. MR HODEL HAS A LONG RECORD OF WORKING CLOSELY WITH ORGANIZED LABOR IN MEETING THE ENERGY NEEDS OF THE FUTURE. HIS ABILITY TO GET THE JOB DONE IS SORELY NEEDED.

MARVIN L WILLIAMS
LAWRENCE KENNEY WASHINGTON STATE LABOR COUNSEL AFL-CIO
2815 2 AVE
SEATTLE WA 98121

NNNN

THE WILDERNESS SOCIETY

WILLIAM A. TURNAGE
EXECUTIVE DIRECTOR

7 December 1982

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 9 1982

The Hon. James McClure
U.S. Senate
Washington, D. C. 20510

Dear Senator McClure:

We strongly urge you to oppose the confirmation of Donald P. Hodel to become Secretary of Energy.

Mr. Hodel's record on energy policy is clear from his tenure with the Bonneville Power Administration and his work to carry out the environmentally disastrous policies of Interior Secretary James Watt. His nomination gives clear confirmation of this Administration's desire to continue on a course of unreasonably hastening the development of America's precious resources.

As the quiet surrogate of James Watt's unpopular policies, Mr. Hodel played a key role in DOI's attempt to open up federal lands to energy and mineral development; slow down acquisition of parkland, and accelerate drilling on the outer continental shelf. As Chairman of the Minerals Management Service Board, Mr. Hodel took the initiative with new coal leasing regulations which allow legal land speculation, geothermal leasing, new onshore leasing rules, OCS lease procedures -- and every other aspect of the Administration's "privatization" program.

The Reagan Administration's concept of "privatizing" our national resources -- which Mr. Hodel has vigorously supported and sought to carry out -- calls for the sale of 35 million acres of federal land; the leasing of virtually the entire outer continental shelf in the next few years; the accelerated sale of federal coal deposits; the opening of wilderness areas to oil and gas development; and the doubling of the present annual cut from national forests. The Administration's claim that the sale of these resources will offset the national debt is discredited with the recognition that even if the government meets its goal of raising $17 billion in five years by these sales, this would contribute only enough money annually to offset an average of 3% of the interest on the debt -- and not touch the debt at all!

A specific example of the fire sale atmosphere accompanying these initiatives -- and an action in which Mr. Hodel played the major role, is the staging of the largest coal sale in the nation's history in Wyoming's Powder River Basin -- where the Department of the Interior sold the federal coal for an average of 3.5¢ per ton, even though two privately-owned comparable tracts in the same area had a few months earlier sold their coal for 18-20¢ per ton.

The speed at which the Administration -- and Mr. Hodel -- have tried to implement their program to turn over our federal resources to private interest is alarming. There is no sign of careful, rational, long-range planning considerations. As head of the Bonneville Power Administration, Mr. Hodel took a similar tack in the debacle of the Washington Public Power Supply System, where he showed poor judgment and little concern for energy conservation or the public interest, and in which he suppressed a report which would have shown how unwise those investments were.

Mr. Hodel has been a principal participant -- literally a "partner in crime" -- in James Watt's all-encompassing crusade to undo the environmental progress of this century. We find it appalling that his reward for this malfeasance is elevation to a Cabinet post.

Mr. Hodel's record does not speak well for well-balanced, carefully thought-out environmental and energy policies. Judging from Mr. Hodel's past record, and considering his characterization of the environmental community as "a small arrogant faction ... dedicated to bringing our society to a halt," it is difficult to anticipate a change in his attitude toward the conservation issues about which the American public -- and the Congress -- are becoming more and more concerned. We hope that you will take a hard look at Mr. Hodel's consistent, anti-environmental record and cast your vote against his confirmation.

Sincerely,

William A. Turnage

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HONORABLE JAMES A MCC
US SENATE
WASHINGTON DC 20510

AS WE, OF THE YAKIMA INDIAN NATION WORKED WITH DON HODEL. WHEN HE WAS IN THE PORTLAND AREA, WE CAME TO REALIZE HIS WILLINGNESS TO UNDERSTAND, AND TO APPROACH FAIRLY THE PROBLEMS AND SPECIAL NEEDS OF THE COLUMBIA RIVER FISHERIES. WE CALLED UPON HIS OFTEN FOR HIS EXPERT AND ABLE ASSISTANCE. AS CHAIRMAN OF THE YAKIMA TRIBAL COUNCIL, I WOULD LIKE TO RECOMMEND YOUR COMMITTEE'S FAVORABLE DECISION, OF DONALD HODEL AS OUR NEXT SECRETARY OF ENERGY.

JOHNSON MENINICK CHAIRMAN
YAKIMA TRIBAL COUNCIL
TOPPENISH, WASHINGTON

18:15 EST

MGMCOMP